United States Court of Appeals

for the Second Circuit



APPELLANT'S APPENDIX

75-1390

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

- X

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-v-

JOSE LABOY,

Docket No. 75-1390

Defendant-Appellant.

- X

Appeal from the United States District Court
for the Eastern District of New York

APPENDIX FOR APPELLANT

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PHILIP PELTZ and
CAROL MELLOR, On the Brief

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CRIMINAL DOCKET

75CR 116 BARTELS, J.

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.: CORCORAN
vs.	deft. J. Laboy
LUIS LABOY and JOSE LABOY	Philip Peltz
	For Defendant: L. Laboy
	Richard Rosenbaum

id distribute cocaine

ABSTRACT OF COSTS	AMOUNT		CASH RECEIVED AND DISBURSED					
			DATE	NAME	RECEIVED		DISBURSED	
Fine,			11/21/75	Notice of appeal(No fee)				
Clerk,				(JOSE LABOY)				
Marshal,								
Attorney,								
Commissioner's Court,								
Witnesses,								

DATE	PROCEEDINGS
16/75	Before BRAMWELL,J.- Indictment filed
6/75	Magistrate's file 74 M 1684 inserted into CR jfile.
7/75	Before BARTELS,J.- Case adjd to 3/10/75 at 9:30 A.M. for pleading
/75	Before BARTELS,J.- Case called- Defts and counsel present- Defts arraigned and enter pleas of not guilty- Trial set down for 5/19/75 at 10:00 A.M, Bail contd
8/75	Notice of readiness for trial filed
16/75	Notice of motion to dismiss,severance,suppression, etc. filed(JOSE LABOY)
5-29-75	Before BARTELS J - case called -Defts & counsels present - Govts motion for an adjournment argued and granted - trial adjd to July 29, 1975 - defts motion to suppress -court directs Theodore Fance to appear per subpoena date May 15, 1975 on adjd trial date of July 29, 1975 at 10:00 am - hearing on defts motion to

75CR 116

DATE	PROCEEDINGS
	suppress ordered and begun - Hearing concluded - defts motion to suppress is denied - defts (J.Laboy) motion for return of contraband vehicle is denied - defts (J.Laboy) motion for return of tools therein granted.
8/75	Letter from Richard Rosenbaum filed re:adjournment of trial
18[illegible]5	Voucher for expert services filed(reporter)
-10-75	Copy of Notice filedreceived from Chambers -trial to proceed on Sept 16, 1975.
19/75	Before BARTELS,J.- Case called- Defts and counsel present- Interpreter sworn-After having been advised of his rights by the Court and on his own behalf deft Luis LaBoy withdraws his plea of not guilty heretofore interposed and enters a plea of guilty to Counts 1 and 2 of the indictment - Sentence adjd without date-Bail cont'd-Trial ordered andbegun as to Jose LaBoy-Jurors selected and sworn- Trial cont'd to 9/19/75 at 10:30 A.M.
19/75	Before BARTELS,J.- Case called- Deft and counsel present- Trial resumed- Deft's motion for judgment of acquittal on count 2 argued-denied-deft's motion for judgment of acquittal on count 1 argued-denied-trial contd to 9/22/75 at 9:45 A.M.
/22/75	Govt's memorandum of law in support of motion to admit firearm into evidence filed
-22-75	Stenographers transcript filed dated 9-19-75(Luis Laboy)
9-22-75	Before BARTELS J - case called - deft Jose Laboy & atty P.Peltz present - trial resumed - Deft renews motion under Rule 29 - denied -Govt sums up - Deft sums up - alternate excused - Marshals sworn - jury retires at 6:00 PM - Order of sustenance signed - at 9:45 PM Jury is excused until 9-23-75 at 9:45 am to continue deliberations - trial contd to 9-23-75.
[illegible]23-75	Before BARTELS J - case called - deft JOSE LABOY & counsel Philip Peltz present - trial resumed - Order of sustenance signed for lunch and coffee - Jury resumes deliberations at 10:50 am - Jury returns at 3:30 PM with a verdict of guilty on count one of the indictment and report they are unable to agree as to count 2 - after further instruction by the Court the jury retires at 3:45 PM to continue their deliberations - Jury returns at 4:20 PM and report they are still unable to agree - court declares a mistrial as to count 2 - Jury is excused - defts motion to set aside the verdict as against the weight of the evidence is denied - sentence adjd without date - bail contd.
	[illegible] filed

75 CR-116

CRIMINAL DOCKET

DATE	PROCEEDINGS
9-25-75	Copy of stenographers transcript filed dated May 19, 1975. (pgs 1 to 142)
11-14-75	Before BARTELS J - case called - sentence adjd to Nov. 17,1975 at 5:30 PM as to deft Luis Laboy.Deft JOSE RAMON LABOY & counsel Philip Beltz present - deft sentenced on count one to imprisonment for 3 years plus special parole term of 5 years in addition to such term of imprisonment. Deft advised of right to appeal. Execution of sentence stayed pending appeal.
11-14-75	Judgment & Commitment filed - certified copies to Marshal. (JOSE RAMON LABOY)
11/17/75	Financial affidavit filed (JOSE LABOY)
11/17/75	Before BARTELS,J.- Case adjd to 11/21/75 at 9:30 A.M. for sentence (LUIS LABOY)
11/21/75	Before BARTELS,J.- Case called-deft LUIS LABOY and counsel present-def sentenced on counts 1 and 2 pursuant to T-18, U.S.C. Sec. 4209, in lieu of a definite term on each count, deft sentenced for treatment and supervision pursuant to T-18, U.S.C. Sec. 5010(b) of the Y.C.A.- until discharged by the Youth Corrections Division.
11/21/75	Judgment and Commitment filed- certified copies to Marshal
11/21/75	Notice of appeal filed(JOSE LABOY)
11/21/75	Docket entries and duplicate and notice of appeal mailed to court of appeals
11/26/75	Certified copy of Judgment and Commitment retd and filed- deft delivered to MCC(LUIS LABOY)
12-4-75	Order filed received from the Court of Appeals that the Index to Record be docketed on or before Dec. 15, 1975. (Jose La Boy)
12/10/75	Stenographers Transcript dated 9/19/75,9/23/75,9/22/75,and 10/21/75 filed
12/11/75	Record on appeal certified and mailed to court of appeals
12/15/75	Acknowledgment received from court of appeals for receipt of record
12-15-76	Stenographers transcript filed dated 11-14-75
12/23/75	Certified copy of Judgment and Commitment retd and filed- deft delivered to U.S.P. at Petersburg Va(LUIS LABOY)

B. C. 109

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RJD:PFC:cj
F.#743,589

BARTELS, J.

75CR 116

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - x

UNITED STATES OF AMERICA,

-against-

LUIS LABOY and JOSE LABOY,

Defendants.

- - - - - - - - - - - - - - - - - x

INDICTMENT

Cr. No. 75CR116
(T. 21, U.S.C., §841 (a)(1); T. 21, U.S.C., §846)

2-14-75

THE GRAND JURY CHARGES:

COUNT ONE

From on or about and between the 21st day of November, 1974, and the 3rd day of December, 1974, both dates being approximate and inclusive, within the Eastern District of New York, the defendant LUIS LABOY and the defendant JOSE LABOY, together with one ALBERTO GUINONE, named as co-conspirator herein but not as a defendant, did wilfully and knowingly combine, conspire, confederate and agree together to commit an offense against the United States in violation of Title 21, United States Code, Section 841(a)(1) in that they did conspire to distrubute quantites of cocaine, a Schedule II narcotic drug controlled substance, in violation of Title 21, United States Code, Section 846.

In furtherance of said unlawful conspiracy and for the purpose of effecting the objectives thereof, the defendant LUIS LABOY and the defendant JOSE LABOY committed the following:

OVERT ACTS

1. On November 21, 1974, ALBERTO GUINONE met with undercover agent Ronald Melvin at Herkimer Street and Rockaway Avenue, in Brooklyn, New York.

2. On December 3, 1974, the defendant LUIS LABOY met with undercover Drug Enforcement Agent Ronald Melvin at Somers Street and Stone Avenue in Brooklyn, New York. (Title 21, United States Code, Section 846).

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COUNT TWO

On or about the 3rd day of December, 1974, within the Eastern District of New York, the defendant LUIS LABOY and the defendant JOSE LABOY did knowingly and intentionally possess with the intent to distribute approximately one hundred and fourteen (114) grams of cocaine, a Schedule II narcotic drug controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

A TRUE BILL.

Robert W. Barnwell
FOREMAN

DAVID G. TRAGER
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

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MR. PELTZ: I haven't looked at it, your Honor.

THE COURT: Put the witness on the stand. You can still get it after he testifies.

A L B E R T O P I N E D A , called as a witness, having been first duly sworn by the Deputy Clerk, was examined and testified as follows:

THE CLERK: Will you state your name for the record and please spell it?

THE WITNESS: A-L-B-E-R-T-O Pineda, P-I-N-E-D-A.

DIRECT EXAMINATION

BY MR. ADLERSTEIN:

Q Now, Mr. Pineda - -

MR. ADLERSTEIN: Your Honor, may I proceed?

THE COURT: Certainly.

Q (Continuing) Mr. Pineda, I would like to remind you again to please speak loudly.

THE COURT: We can adjust the loud speaker here. I think he is speaking loud enough as it is. Go ahead.

MR. ADLERSTEIN: Thank you.

Q Mr. Pineda, where do you live?

A I lived in Brooklyn.

Q Do you have any nicknames?

A Panama.

Q That is Panama?

A Yes, sir.

Q How old are you, Mr. Pineda?

A I am twenty-six years old.

Q Where were you born?

A Panama City, Panama.

Q Are you a citizen of the United States?

A Yes, sir.

Q How many languages do you speak?

A Spanish and English.

Q Where did you learn how to speak English?

A Panama City, Panama.

Q When did you come to the United States?

A February 1971.

Q And what did you do when you first arrived in the United States?

A In the United States Army.

Q Where were you stationed in the United States Army?

A Fort Knox, Kentucky.

Q How long were you in the army?

A Two years.

Q Would you please tell the jury what rank you attained while you were in the army?

A Spec. 4.

THE COURT: Wait a minute.

What is that?

Q Will you please tell the jury some idea where in the continuum of rank Spec. 4 is?

A One rank before sergeant.

Q Below sergeant?

A Yes, below sergeant.

Q What kind of discharge did you receive from the army?

A Honorable discharge.

Q Now, were you ever arrested or - - were you ever arrested while you were in the army?

A Yes, sir.

Q What were you arrested for?

A Shoplifting.

Q What was the result of that arrest?

A I was fined fifty dollars.

Q A fine of - -

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A Fifty dollars.

Q And were you ever court-martialed while you were in the military?

A No, sir.

Q Now after you left the army, Mr. Pineda, where did you work?

A I worked at the Gouverneur Hospital.

Q Where is that located?

A At 227 Madison Street.

Q In New York City?

A New York City.

Q Manhattan?

A Yes, sir.

Q And what kind of work did you do at the Gouverneur Hospital?

A Accountant.

Q Excuse me?

A Accountant.

Q And how much were you paid for the work that you did in accounting?

A $268.00 every two weeks.

Q And how long did you work at the Gouverneur Hospital?

A One year.

Q Where did you work after you left the Gouverneur Hospital?

A I worked at Todd Shipyards in Brooklyn.

Q What was your job at Todd Shipyards?

A I was the night superintendent clerk.

Q How much did you earn while you worked at Todd Shipyards?

A $150.00 a week.

Q How long did you work at Todd Shipyards?

A Eight months.

Q And are you still working there?

A No, sir.

Q Are you attending any school?

A Yes, sir.

Q What school are you attending?

A Investigation. Korea Institute.

Q Is that in New York City?

A Yes.

Q And the course of study you are taking is again?

A Investigation.

Q Do you expect to be graduated at any particular time?

A Yes, sir.

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Q And when is that?

A 29th of September.

Q Later this month?

A Yes, sir.

Q Now, calling your attention, Mr. Pineda, to the end of 1973 and the beginning of 1974, did there come a time when you had an opportunity to enter into a deal involving drugs?

A Yes.

Q And did you enter into such a deal?

A Yes, sir.

Q With who?

A With a fellow by the name of Jose.

Q And how was the deal supposed to work?

A I get the buyer and he was the seller.

THE COURT: I get the buyer but he himself was the seller?

THE WITNESS: Yes, that is right.

Q How much cocaine did Jose want to sell?

A Two ounces of cocaine.

Q And did you get a buyer for him?

A Yes, sir.

Q Do you know how much was paid for that cocaine?

A-8

A $2,000.

THE COURT: Who are we talking about now? About this Jose?

MR. ADLERSTEIN: No one who has anything to do with this case, your Honor.

THE COURT: Okay.

Q And how much did you receive for this work that you did?

A A hundred dollars.

Q Now, at this time did you know that dealing in cocaine was against the law?

A Yes, sir.

Q Do you know today that dealing in cocaine was against the law?

A Yes, sir.

Q Was this the first time that you dealt with drugs, when you dealt with this man named Jose?

A Yes, sir. It was the first time I dealt with drugs, only that I smoked marijuana.

Q And have you ever used cocaine, or heroin, or any hard drugs?

A No, sir.

Q Now, did there come a time, Mr. Pineda, when you arranged for a second cocaine deal?

A-9

A Yes, sir.

Q And when was that?

A That was between July and August of 1974.

Q And how was that deal supposed to work?

A I had to get the buyer, and I have the seller.

Q Did you find the buyer?

A Yes, sir.

Q Who did that buyer turn out to be?

A It turned out to be Agent Melvin of the Drug Enforcement Administration.

MR. ADLERSTEIN: Your Honor, may I approach the bench for just a moment? I want to clarify something.

(A discussion took place at the bench between the Court and counsel.)

MR. ADLERSTEIN: Would it be proper for me to point out that Agent Melvin is the case agent in the courtroom right now?

THE COURT: I see no objection to that.

(The following occurred in open court.)

Q Mr. Pineda, the case agent Melvin is the case agent who is in this courtroom today at government's consel table?

A Yes, sir.

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Q Now, when you arranged to have Mr. Melvin to buy the drugs in July and August of 1974 - -

A Yes.

Q - - Did you know he was a Drug Enforcement agent at that time?

A No, sir.

Q When did you find out that he was a Drug Enforcement Administration agent?

A After we obtained the cocaine.

Q Did you in fact get cocaine for him?

A Yes.

Q How much did you get?

A An eighth of a kilo of cocaine.

Q One-eighth of a kilo of cocaine?

A Yes.

Q And was any legal action taken against you after you were arrested?

A Yes, sir.

Q What happened?

A Pleaded guilty.

Q To what charge?

A To the cocaine charge.

THE COURT: He did what?

MR. ADLERSTEIN: He pleaded guilty.

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THE COURT: Oh, I see.

MR. ADLERSTEIN: To dealing in cocaine.

THE COURT: In this court?

THE WITNESS: Yes, sir.

Q Have you as yet been sentenced on that charge?

A No, sir.

Q Do you know who will be sentencing you?

A Yes, sir.

Q Which judge?

A Judge Costantino.

Q Is Judge Costantino a judge of this court?

A Yes, sir.

Q Has anyone told you what your sentence will be?

A Fifteen years up.

Q That is the maximum sentence is fifteen years?

A Yes.

Q But do you know exactly what the judge is going to sentence you to?

A No, sir.

Q Are you hoping that Judge Costantino will hear about your testimony in this court today and decide to be lenient with you?

A-12

A Yes, sir.

Q Now, after being arrested by Agent Melvin did you start to work with him in any particular way?

A Yes, sir.

Q How did you start to work with Agent Melvin?

A I got the guys to sell it and he would buy it.

THE COURT: Wait a minute.

You would try to get him as the buyer or you would first find out the seller, or what would you do?

THE WITNESS: Right. I would be like the informant.

THE COURT: You would be the informant. You would try to get the seller?

THE WITNESS: Right.

Q In other words, you would try to find sources of cocaine.

MR. PELTZ: Can we get the testimony from the witness, please, your Honor?

THE COURT: Well, I think we are just trying to expedite the trial, that is all.

Yes, go ahead.

Q Had you been actually able while working with Agent Melvin to find sources of cocaine for him?

A I beg your pardon?

Q Have you been able to find people with drugs for Agent Melvin?

A Yes, sir.

Q And has the Drug Enforcement Administration given you any money in connection with your work?

A Yes, sir.

Q And how much money have they given you?

A $265.00.

MR. ADLERSTEIN: Your Honor, was the witness clear on what the amount was?

THE COURT: What was that?

MR. ADLERSTEIN: Was that clear as to what the amount was?

THE COURT: $265.00, yes.

MR. ADLERSTEIN: Thank you, your Honor.

Q Were arrests made as the result of your cooperation?

A Yes, sir.

THE COURT: The $265.00 was not paid? It was to be used to buy or what?

THE WITNESS: That was for expenses.

THE COURT: Expenses?

THE WITNESS: Yes.

THE COURT: Did they give you any money to use to buy cocaine from sellers?

THE WITNESS: No.

THE COURT: They didn't give you the money? You were an in-between man?

THE WITNESS: Yes, sir.

Q Now, Mr. Pineda, did there come a time when you met a man, Alberto Quinone?

A Yes, sir.

Q When was that?

A That was in November 1974.

Q And how did you meet Alberto Quinone?

A I met him in the street.

Q Where did you meet him?

A In Rockaway and Herkimer Street in Brooklyn.

THE COURT: What is the first name?

THE WITNESS: Rockaway.

Q And did you meet Alberto Quinone after you had started working with Agent Melvin?

A Yes, sir.

Q And when you met Alberto Quinone did you discuss possibly obtaining drugs from him?

A Yes, sir.

Q And did Alberto Quinone tell you whether he

A-15

could obtain drugs?

A Yes, sir.

Q What did he tell you?

A He told me that he would have to go to talk to his man and he would tell me - - he would talk to him.

THE COURT: You had better speak up.

He would have to go where?

THE WITNESS: Go to his man.

THE COURT: His man?

THE WITNESS: Yes.

Q What do you mean by "his man"?

A The man that sells it, that has the cocaine.

Q Now - -

THE COURT: Of course I suppose the jury is wondering how you met Alberto Quinone. Did you just walk up to him as a stranger or just how did you do this? I mean Rockaway and Herkimer Street, you see a man and you walk up to him? He says Alberto Quinone and you talk to him right off the bat about drugs?

THE WITNESS: No, you get into conversation with your people - -

THE COURT: Where did you meet him? What made you pick him?

A-16

THE WITNESS: He was pointed out to me by someone.

THE COURT: He was pointed out to you by someone?

THE WITNESS: Right.

THE COURT: As a potential dealer in drugs?

THE WITNESS: Right. You know about it. You have knowledge about who sells.

THE COURT: Can you put that microphone closer to your mouth, please? You have a loud voice but you drop it a little bit. Otherwise it is clear. All right, let's try now.

Q Mr. Pineda, did you talk to Alberto Quinone in connection with your work for Agent Melvin?

A Yes, sir.

Q And you talked to him about whether he could get drugs for you, is that not correct?

A Yes, sir.

Q And he said that he might be able to, is that not correct?

A Yes.

Q Now shortly after meeting Alberto Quinone did you have occasion to meet anyone you see in the courtroom

A-17

today?

A Yes, sir.

Q And who is that?

A The gentleman sitting over there (indicating).

THE COURT: Is that Mr.- - will you stand up please?

(Defendant rises.)

THE COURT: Is that the man?

THE WITNESS: Yes, sir.

MR. ADLERSTEIN: Indicating the defendant Jose Laboy.

THE COURT: Yes.

Q Now, when you met Mr. Jose Laboy were you introduced to him as Jose or was another name used?

A As David.

Q So that first you knew him as David, am I correct?

A Yes.

Q Is that correct?

A Yes.

Q You were introduced - - when you met Jose Laboy for the first time did you meet anyone else?

A Yes, sir.

Q Who is that?

A Luis. A fellow by the name of Luis.

THE COURT: Did you know his last name?

THE WITNESS: No, sir.

Q You didn't know his last name then. However, do you know his last name today?

A Yes, sir.

Q What is his last name?

A Luis Laboy.

Q Did you meet anyone else besides Jose Laboy and Luis Laboy?

A One man by the name of Willy, and one man by the name of Israel.

Q Now, where did you meet the defendant Jose Laboy and these other people?

A I met them at 88 Stone Street, Apartment 2-F.

Q Where is that?

A In Brooklyn.

Q And when you met the defendant Jose Laboy and Luis Laboy and Israel were you with Albert Quinone?

A Yes, sir.

THE COURT: Why don't you ask him how he came to meet them? I mean first we see him talking with Quinone and the next

thing we find him in 88 Stone Street.

MR. ADLERSTEIN: Thank you, your Honor.

Q How is it that you came to meet these people?

A Alberto took me to Jose so I could meet him.

Q When you got into the apartment at 88 Stone Avenue was there a discussion about drugs?

A Yes, sir.

Q What was said?

A Well, we talked about prices, how much money and how much - -

MR. PELTZ: Objection, your Honor.

Can we determine who took part in the conversation?

THE COURT: We can ask who was there.

MR. ADLERSTEIN: Your Honor, I just am going to get the tenor of the conversation and then who participated in it.

THE COURT: I think that is all right.

Q You talked about quantity and prices?

A Quantity and prices.

Q And did anyone indicate that a certain quantity of drugs at a certain price - -

MR. PELTZ: Your Honor, could we

A-20

have the proper form of questioning as to what was said and by whom?

THE COURT: I think he is going to do that. Aren't you going to do that?

MR. ADLERSTEIN: Yes, I am, your Honor.

THE COURT: He was just opening up the door to show the nature of the general discussion and then he will be specific.

Is that your inclination?

MR. ADLERSTEIN: That is correct.

THE COURT: We are not going to let it stand that way. Talked about the quantity and prices of drugs.

Is that what you said?

THE WITNESS: Yes.

MR. ADLERSTEIN: Yes.

THE COURT: That is awfully vague.

What drug are you talking about?

THE WITNESS: Cocaine.

Q And did the defendant Jose Laboy participate in this conversation?

A Yes, sir.

Q Did he talk about - -

THE COURT: Well, wait a minute.

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I think now Mr. Peltz objects when it becomes pertinent. We are not just going to participate in the conversation. We want to know who said what and - -

MR. ADLERSTEIN: Yes, I was going to go into it.

THE COURT: You are going to go into it. All right.

Q Will you tell the jury what Jose Laboy -- what kind of conversation, who participated in it and what happened?

A Well, he participated about where you can get cocaine, how much the price it cost; how many pieces can you take; what you can do with it.

Q Was the defendant David, that you knew at that time as David, was he the only one who participated in the conversation?

A No, sir.

Q Who else talked about price and quantity and when they could get it?

A Luis Laboy and Willy.

Q And as part of this conversation were any plans made?

A Yes, sir.

Q What plans were made?

A That we had to go talk to the source and they - -

MR. PELTZ: I object to "they."

THE COURT: Yes, this is too general, Mr. Adlerstein. Who are we talking about? Who are you talking about? Who said it?

Q Did the defendant Jose Laboy - -

MR. PELTZ: Your Honor, I object to the leading. Can we have the entire conversation?

THE COURT: Well, you objected to the fact it was general. He is trying to reach the essence of this conversation as soon as possible. I do not see any objection to it under the circumstances.

MR. PELTZ: I respectfully except.

Q Will you please tell the jury what plans were made and who made them?

THE COURT: Who was there and what did they say? Can you give us a picture of who was there as far as you can remember and what was said by whom?

A There was Luis - -

THE COURT: You started out with the

A-23

fact that Luis was there. And who else?

THE WITNESS: David.

THE COURT: And who else?

THE WITNESS: And Willy.

THE COURT: We dont' know Willy's last name, do we?

THE WITNESS: It is supposed to be Willy Cruz.

THE COURT: Who else?

THE WITNESS: Alberto Quinone.

THE COURT: Alberto was there. Who else? Were you?

THE WITNESS: And myself.

THE COURT: Now if you can remember, who led the conversation and what did he say, or if there was no leader what did each of them say, if anything, and what did you say in reply, or did you just listen? And when you do answer take your time. Plenty of time. Now tell us, give us the names if you can. Remember what one person said and another person said in return. Can you do that?

THE WITNESS: Yes, sir. The reason why

I say they - -

THE COURT: You always say "they."

THE WITNESS: The reason why I say they is because there was more than one person involved in it.

THE COURT: Were they all talking at the same time?

THE WITNESS: Well, they all got together and agreed.

THE COURT: Well, you had better tell me what you remember what any one particular person present said.

THE WITNESS: Yes, sir.

THE COURT: All right, what?

Q All right, what did Jose Laboy say?

A Well, first of all - -

THE COURT: That is David.

THE WITNESS: That is David.

THE COURT: All right, what did David say?

THE WITNESS: Well, let me explain it to you. Luis said $1300 is okay for the ounce.

David said, yes, so it is okay.

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I said when will it take place.

Luis would say we have to check if it is okay.

THE COURT: What do you mean? The date?

THE WITNESS: Right, you know, when to come back, okay, we have to do that.

THE COURT: How about amount? Was anything said by anyone as to the amount that you were going to sell?

THE WITNESS: Yes, they wanted an eighth of cocaine. They wasn't sure they could do the eighth.

THE COURT: An eighth of a kilo?

THE WITNESS: Right.

THE COURT: That is what you were bargaining for?

THE WITNESS: Right.

THE COURT: All right, now did anyone promise to get it for you and sell it for you -- I mean sell it to you?

THE WITNESS: Yes,sir.

THE COURT: All right, who?

THE WITNESS: David and Luis.

THE COURT: They were going to sell

it to you. Both or singly?

THE WITNESS: Both.

THE COURT: Both?

THE WITNESS: Yes, sir.

THE COURT: One-eighth is how much?

THE WITNESS: $1300 an ounce.

There was four ounces.

THE COURT: That is four ounces?

THE WITNESS: Yes.

THE COURT: That is around $5,000?

THE WITNESS: Yes, sir, close to $5,000.

Q Now, Mr. Pineda, after this meeting took place did you contact anyone about it?

A Yes, sir.

Q Who did you contact about it?

A I contacted Agent Melvin.

Q Did you tell Agent Melvin what had happened at the meeting?

A Yes, sir.

Q Then later on were any arrangements made to go back to 88 Stone Avenue?

A Yes, sir.

Q How were the arrangements made?

THE COURT: Of course you leave a

A-27

lot of voids there.

I mean you went to the house. When did you go? Do you remember what date you went to the house?

THE WITNESS: It was the 21st.

THE COURT: Of what?

THE WITNESS: Of November.

THE COURT: Of November. All right. Now you had a conversation you say, right?

THE WITNESS: Yes.

THE COURT: You must have left the house. You left?

THE WITNESS: I left.

THE COURT: You left by yourself? Did you leave by yourself?

THE WITNESS: Yes, sir.

THE COURT: After you left what did you do?

THE WITNESS: I went to the telephone booth and I called Agent Melvin.

THE COURT: All right.

BY MR. ADLERSTEIN:

Q What did you tell Agent Melvin when you spoke to him on the telephone?

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A That I argued the price, the possibility of getting whatever we needed for the future.

Q But no arrangement had actually been made to actually come back to the apartment?

A No.

Q Did there come a time when you got in touch with any of the people who you told us about at the apartment?

A Yes.

Q When was it?

THE COURT: Wait a minute.

The jury wants to know what do you mean by got in touch.

Q Did you see or speak to anyone who was at the apartment?

A Yes, sir.

Q And when was that?

A It was about the 27th of November.

MR. ADLERSTEIN: Your Honor, I think that the witness - - may we approach the bench?

(The following discussion took place at the bench between the Court and counsel.)

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MR. PELTZ: Judge, I never had a trial before you, but I have never seen so much leading from the prosecutor. I want to object to constant leading.

THE COURT: It has been harmless up to now because we haven't gotten down to any real statements from the defendant David except the first conversation. Of course one has to tailor his questions to the witness who is being questioned because here we haven't yet a picture set up. But he is right. You are not being specific. I have to come in and say what happened next. I don't lead him but I ask. You leave voids.

MR. ADLERSTEIN: I want to call your attention to the fact that there were some number of meetings that took place between each of the principal meetings - -

THE COURT: Haven't you come down to the main meeting or do you have prior meetings? After the prior meeting what do you do? You can start with the main meeting - - so if you have prior meetings that led up to the main meeting if he wants to bring it out on cross

A-30

he can.

MR. ADLERSTEIN: I think the witness became confused when your Honor asked about the meeting with the various people. The 3500 material which showed - - which showed that the witness met before November 21st at the apartment to be able to set up the November 21st meeting when the agents were at the scene - -

THE COURT: They are there all the time.

MR. ADLERSTEIN: Yes. I am trying to bring this out. And the entire occasion in between consists where he is getting in touch with Quinone's - -

THE COURT: We are going to get the truth here. Was he offered at the suppression hearing?

MR. ADLERSTEIN: No, he was not. He didn't testify at the suppression.

MR. PELTZ: Judge, is the testimony we just heard supposed to have taken place prior to November 21st?

MR. ADLERSTEIN: Yes. Prior to the time that the agents got on the scene.

MR. PELTZ: Judge Bartels, in that case I respectfully move to strike all of said testimony in that the indictment alleges a conspiracy - -

THE COURT: Oh, no.

MR. PELTZ: May I please continue - - there began on November 21st. He is endeavoring to claim the conspiracy started before.

THE COURT: No, read the Court of Appeals cases. No question about that. We would have such restrictive rules you would never be able to find what the truth was. Will you reread the cases?

He gives the background then he comes up to the real conspiracy. He is not being charged with these meetings. This is background.

MR. PELTZ: I told the jury - -

THE COURT: No. These cases happen every day this way.

MR. PELTZ: He has testified my client on the day before the conspiracy began entered into dealings - -

THE COURT: He did not - -

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MR. PELTZ: He said he talked about it. Will you instruct the jury that this is not evidence in furtherance of the conspiracy?

THE COURT: No, I am not going to say anything to the jury.

(The following was held in open court.)

BY MR. ADLERSTEIN:

Q Calling your attention to November 21st, 1974, did you have occasion to see Agent Melvin on that day?

A Yes.

Q Where did you meet Agent Melvin?

A I met him at the intersection of Utica Avenue and Atlantic Avenue in Brooklyn.

Q And when you met Agent Melvin did he do anything in particular?

A Yes, sir.

Q What did he do?

A He searched me for drugs.

Q And after he searched you for drugs did you go anywhere with him?

A Yes, sir.

THE COURT: If he searched him for drugs, what is the result of the search?

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Q What was the result of the search?

A I didn't have any drugs.

Q Where did you go with Agent Melvin?

A We drove to Herkimer and Rockaway Street in Brooklyn.

Q What happened there?

A And there Alberto Quinone was waiting for me, and he - -

Q Now, Mr. Pineda, after you met Alberto Quinone did you go anywhere with him?

A Yes, sir.

Q Where?

A We went up to the address he gave us, 88 Stone Avenue.

Q Did you go with Mr. Quinone and with anyone else?

A Yes, sir.

Q Who did you go with?

A Agent Melvin and Alberto Quinone.

THE COURT: Did he go along with you?

THE WITNESS: Yes.

THE COURT: Did he go with you?

THE WITNESS: Yes.

THE COURT: So you had three.

THE WITNESS: Yes.

THE COURT: This was on November 21st,

right?

THE WITNESS: Yes.

MR. ADLERSTEIN: Yes, it was, your Honor.

THE COURT: You went to 88 Stone Avenue or Stone Street?

MR. ADLERSTEIN: Stone Avenue.

Q Were there other government agents who went to that address that day?

A I guess so. I don't know.

Q You didn't see anyone specific?

A Right.

Q Now, where did Agent Melvin park?

A He parked on Sumner Street, in the middle of the street on Sumner.

THE COURT: Do you want to use the blackboard?

MR. ADLERSTEIN: Your Honor, I thought your Honor might be reluctant to introduce a chart with this witness.

THE COURT: No, proceed. I am sorry I mentioned it.

MR. ADLERSTEIN: Perhaps with the agent.

THE COURT: I am sorry I mentioned it. Proceed.

Q When you were parked with Agent Melvin and Alberto Quinone what did you do?

THE COURT: Let's get the street where he parked.

Q He was parked in Sumner Street?

A Yes, sir.

Q That is - -

A This is Stone Avenue and Rockaway.

Q That is around the corner from Stone Avenue?

A Yes, sir.

Q Down the block a way?

A Yes.

Q When you parked there with Agent Melvin and Mr. Quinone what did you do?

A Both Alberto Quinone and myself got out of the car.

THE COURT: And what happened to Melvin?

THE WITNESS: He stayed in the car.

Q Where did you go with Alberto Quinone?

A To 88 Stone Street, Apartment 2-F.

Q And was Alberto Quinone with you?

A Yes, sir.

Q Did you go into the apartment?

A Yes, sir.

Q Who was in the apartment?

A Luis and David and Willy.

Q And,again, David is who?

A Jose.

Q The defendant Jose Laboy?

A Yes, sir.

Q When you got into the apartment will you please tell the jury what the conversation was and who said what in the conversation?

A Jose, Luis and myself, Alberto and Willy - -

THE COURT: When you say Jose are you referring to David?

THE WITNESS: Right.

Q Did you ask - -

THE COURT: How shall we refer to him now, as David or Jose?

MR. ADLERSTEIN: I think Jose would be most convenient.

THE COURT: You want to refer to him as Jose?

THE WITNESS: I was introduced as David. I knew him as David.

THE COURT: Well, you can use David as long as we know who we are talking about.

When you say David you are talking about this man over here (indicating), right?

THE WITNESS: Yes.

Q Now, was there a conversation that took place?

A Yes, sir.

Q Will you please tell the jury what was said and who said it?

A We went up there. I said I will bring Agent Melvin up about how much cocaine we want first and - -

THE COURT: You didn't use the word agent. You said you will bring your buyer up. Is that what you said?

THE WITNESS: Yes.

THE COURT: To find out what - - for what purpose did you say?

THE WITNESS: To purchase the cocaine.

THE COURT: You didn't mention any amounts or sales price?

THE WITNESS: That is what we went up there to discuss, price.

Q After you asked this question were you given an answer by anyone?

A Yes, sir.

Q And who answered you?

A Luis, David, they all answered together. Everybody. The question was whether I could bring a man upstairs or not.

He said no because he was white.

THE COURT: You had better say that all over slowly because I didn't understand it.

MR. ADLERSTEIN: Your Honor, I think he is trying to do the best he can.

THE COURT: I know you are doing the best you can. We understand that. But you will have to do it a little more slowly so we know what you said. I understand you said Luis, David, and then I lost you.

Now what happened?

THE WITNESS: What happened is that I took Agent Melvin so he - -

THE COURT: You took him up? You took Agent Melvin up there?

THE WITNESS: No, that was my intention.

THE COURT: Your intention was to take him up. You said you were going to.

THE WITNESS: My intention was to let Agent Melvin meet David and Luis.

THE COURT: I see.

BY MR. ADLERSTEIN:

Q And were you answered about your request to have him come up?

A Yes.

Q Did anyone say whether you could or could not send him up?

A They said that I couldn't.

Q When you say "they," whom do you mean?

A Luis, Jose and Willy.

Q And after you talked about bringing the agent up did you talk about anything else?

A Yes, sir.

Q What did you talk about?

A Making a buy of one-eighth of cocaine.

Q And who mentioned the eighth?

A I mentioned I wanted an eighth of cocaine.

Q Did anyone answer you when you said you wanted an eighth of cocaine?

A Yes, sir.

Q Who answered you?

A Luis, David and Willy.

THE COURT: All at the same time?

THE WITNESS: There was a group there. Everybody together.

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THE COURT: What did they say?

THE WITNESS: That they could get it.

THE COURT: Could or couldn't?

THE WITNESS: Could get it.

Q That they wanted to do an eighth, did they say they wanted to do an eighth at that time?

A No, sir.

Q What were you told about the quantity that anyone there wanted to sell at that time?

A That all that they could sell me was one ounce of cocaine. And after they get to know me they would sell me more until I get one-eighth.

Q When you say "they," whom do you mean?

A Luis, Jose and Willy.

THE COURT: Wait a minute.

Now we are mixing our names up again.

Do you mean David or Jose?

THE WITNESS: I mean Jose. The man Jose that is sitting over there.

THE COURT: All right.

MR. ADLERSTEIN: I think when the witness has been saying he means Jose.

THE COURT: I understand that. But now he jumps back to Jose. I want to know

whether there is a new character in it.

Q Was anything discussed about price?

A Yes, sir.

Q What was discussed about price?

A That they would sell me one ounce for $1300.

Q When you say "they would sell," whom do you mean?

A Jose, Luis and Willy.

THE COURT: All right.

Q After this conversation took place what did you do?

A I left the apartment and went back downstairs to the car and - -

Q Did you say anything to Agent Melvin?

A Yes.

THE COURT: Where is Alberto in this proceeding? Is he with you?

THE WITNESS: Yes, sir.

THE COURT: You didn't mention that before. He was up there at the time with you, right?

THE WITNESS: He went up there with me. But the last time he was there - -

THE COURT: He was there every time

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you were there, was he?

THE WITNESS: He took me there. He was the one who took me.

THE COURT: Did he go inside with you?

THE WITNESS: Yes, sir.

THE COURT: Did he go inside with you every time?

THE WITNESS: Yes, sir.

THE COURT: So he was there - -

THE WITNESS: Yes, sir.

MR. ADLERSTEIN: I believe the witness said there was one time when Alberto Quinone wasn't there. But I think we will get to it.

THE COURT: There was a time when he wasn't there, Alberto?

MR. ADLERSTEIN: We will be coming to it.

BY MR. ADLERSTEIN:

Q When you got back to Agent Melvin did you say anything to Agent Melvin?

A Yes, sir.

Q What did you tell Agent Melvin?

A They only wanted to do one ounce at a time. They

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didn't want to do the eighth of a kilo of cocaine.

Q What did Agent Melvin answer?

A He didn't want an ounce. He wanted an eighth of cocaine.

Q After Agent Melvin answered, then what happened?

A He sent Alberto to tell them to get - -

Q He sent him to do what?

A To tell Jose and Luis that he didn't want an ounce of cocaine. He wanted an eighth of cocaine.

Q Did Alberto Quinone do anything after Agent Melvin asked him to do this?

A Yes. He left the car and went to the apartment.

Q You didn't see him enter the apartment?

A No.

Q You saw him go around the corner?

A Yes.

THE COURT: Well, now wait a minute, it is ten after one. I think we ought to stop and have lunch and then come back. I guess a quarter after, if it is possible, or twenty after,the latest.

All right, gentlemen.

MR. PELTZ: Judge Bartels, after the

jury is out I have a request.

(The jury thereupon retired from the courtroom.)

THE COURT: Yes. I don't know why I can't start a trial without applications in the morning and applications in the afternoon.

MR. PELTZ: I am sorry, your Honor, but I didn't hear you.

THE COURT: I am trying to expedite this thing without applications.

What do you want?

MR. PELTZ: I just wanted to know your Honor's scheduling for tomorrow and for Monday. The reason I ask is ordinarily we work Monday through Thursday and I had made an appointment for an interview tomorrow afternoon in Garden City.

THE COURT: I can tell you - - we will have a few items in the morning. What are they?

THE LAW CLERK: Two sentences and one pleading.

THE COURT: Well, I think it's a proper question. We don't want to yank you in here

too early. I suppose we can't start before eleven, gentlemen.

THE LAW CLERK: All three of these matters are scheduled for 9:30.

THE COURT: Or 10:30.

MR. PELTZ: Somebody had said you had said something about Monday.

THE COURT: I would not know until tonight. I have got to go to Baltimore. I hope to be back Sunday night and therefore we will work Monday. If I have to stay over until Monday then I will have to postpone until Tuesday. I hope that doesn't happen.

MR. PELTZ: But you won't know until tonight?

THE COURT: I will know tomorrow morning. I have to know tomorrow morning.

MR. ADLERSTEIN: What time would you like us back?

THE COURT: Do the best you can. About 2:20.

(Thereupon, at 1:15 o'clock p.m. a luncheon recess was taken to 2:20 o'clock p.m.)

AFTERNOON SESSION

ALFONSO PINEDA, resumed and testified further as follows:

DIRECT EXAMINATION

BY MR. ADLERSTEIN (Continued):

Q Mr. Pineda, calling your attention again to November 21, 1974, I believe we left off at the point when you, Alberto Quinone and Agent Melvin are in a car together after you left an apartment at 88 Stone Avenue, and you had a discussion with Agent Melvin. Now, after that discussion, does Mr. Quinone do anything?

A Yes, sir.

Q What does he do?

A He left the car to go back to the apartment.

THE COURT: You have to speak louder. These people are anxious as to what you have to say and it ought to come out loudly and clearly. You're not afraid of anything, are you?

THE WITNESS: No, sir.

THE COURT: Talk that way.

He left the car?

THE WITNESS: He left the car and went back towards the apartment on 88 Stone Avenue.

Q And how long was he out of your eyesight?

A For about 15 minutes.

Q And then he came back into your eyesight?

A Yes.

Q And where did he go?

A He came back to the car.

Q And did he say anything when he got back to the car?

A Yes, sir.

Q What did he say?

A He said that he told -- the message that Agent Melvin --

THE COURT: Does anyone understand? No use talking if we can't understand you. Take it slowly. I know it's hard. Don't be afraid and talk slowly and try to see that we must understand what you are talking about. He said what?

THE WITNESS: Quinones came back and told Agent Melvin and I that he gave them the message that he was told to give to Luis and Jose.

Q Did he say anything further?

A Yes.

Q Was that the gist of the conversation in the car when he came back?

A Yes, sir.

MR. PELTZ: I object to the leading.

THE COURT: He has to. You can see the story here ordinarily when it's difficult for a witness to speak clearly and it's not his fault. We want to have the jury understand what he is talking about. It may be necessary to have a few leadings questions to have that result.

Q After this conversation had taken place, did you go anyplace?

A Yes.

Q And where did you go?

A Agent Melvin and I and Roberto drove back to Herkimer Street. We left Quinones. Agent Melvin left me back where he picked me up at Utica and Atlanta Avenue.

Q I'm not sure that came across. How many stops did you make after you left the vicinity of 88 Stone Avenue? How many stops were made with the car?

A Two stops.

Q And what happened at the first stop?

A We left Alberto Quinones.

Q And what happened at the second stop?

A Agent Melvin dropped me off at Utica and Atlantic.

Q Now, calling your attention, Mr. Pineda, to November 27 --

THE COURT: This all occurred November 21st?

MR. ADLERSTEIN: Yes, your Honor.

THE COURT: Now we have November 27th. Do you think your testimony might come over clearer if you didn't have this amplifier?

THE WITNESS: No, it's all right.

THE COURT: You think you need it?

THE WITNESS: Yes. Thank you.

BY MR. ADLERSTEIN:

Q Now, Mr. Pineda, on November 27, 1974, did you have occasion to see Agent Melvin on that day?

A Yes, sir.

Q And where did you meet Agent Melvin on that day?

A On Utica and Atlantic Avenue in Brooklyn.

Q And what happened there?

A Agent Melvin searched me for drugs, if I had anything, and from there going to where we were supposed to go.

THE COURT: See, you dropped your voice and then I don't hear it over here. If I was in the jury box -- I don't hear it properly over here.

He searched you for drugs and something happened?

THE WITNESS: Then from there we drove to where we were going.

Q And where did you go -- what was the result of

the search?

A No drugs.

Q And then where did you go?

A To Herkimer and Rockaway.

Q And what happened there?

A Went to meet Alberto Quinones.

THE COURT: Why not just say Alberto, I think we will get it.

Q Did you meet Alberto?

A Yes, sir.

Q And what happened next?

A Alberto came to the car, told Agent Melvin everything was set, was ready, and Agent Melvin showed him the money and said he was ready, and from there we drove back to 88 Stone Avenue.

THE COURT: Showed him the money but didn't give him the money?

THE WITNESS: That's right.

Q And where did you park when you got to the vicinity of 88 Stone Avenue?

A In the middle of Sumner Street.

Q Again around the block and about halfway down the street?

A Yes, sir.

Q And after you parked, what did you do?

A Alberto and myself got out of the car towards 88 Stone Avenue and on the way going to the apartment there was waiting an unknown person coming down the street.

Q Willie and another person?

A Yes, sir.

Q Do you know who this other person is?

A No, sir.

Q He's not in this courtroom?

A No, sir.

Q And where did you meet Willie and this other person?

A On the stairs of 88 Stone Street.

THE COURT: You were already inside?

THE WITNESS: Downstairs.

THE COURT: Outside?

THE WITNESS: Yes.

THE COURT: Were there stone steps?

THE WITNESS: Yes, sir.

THE COURT: Going up the stone steps?

THE WITNESS: Going up the stone steps.

THE COURT: And you saw Willie and an unknown person coming down; is that right?

THE WITNESS: Yes, sir.

BY MR. ADLERSTEIN:

Q And was anything said at that particular time?

A Yes.

Q What was said?

A Luis said to Alberto that they have cocaine.

Q And after that what happened?

A Alberto and myself walked back to the car where Agent Melvin was and told him what had happened, that the cocaine was already sold, it was too late.

Q And then what did you do?

A We got back in the car, Agent Melvin told Alberto any time they get ready again, let me know.

I went back, took him from where we got him and Agent Melvin took me back to Utica Avenue and I went home.

Q Now, Mr. Pineda, calling your attention now to the 3rd of December 1974, did you have occasion to go to 88 Stone Avenue on that day?

A Yes, sir.

Q What time did you go to 88 Stone Avenue?

A Approximately between 10:30 and 11.

THE COURT: Now you're talking about a.m. or p.m.?

THE WITNESS: A.M.

Q Did you happen to go to any particular apartment?

A Yes, sir.

Q What apartment was that?

A Luis LaBoy's apartment.

Q And that was apartment number what?

A 2-F.

Q Is that the same apartment that you had met prior to that occasion?

A Yes, sir.

Q And who, if anyone, was at that apartment?

A Yes, sir, someone was there, Luis.

Q Just Luis?

A Yes, sir.

Q And what occurred when you arrived at the apartment and saw Luis there?

A I told him that I came to see about the cocaine, and he told me to take him somewhere to see about it, what we would do about it.

Q Then what did you do after he told you this?

A I asked him where we had to go, to direct me there, went in a car and we went to 24 Furman Street.

Q And who drove?

A I drove him.

Q Did you have a passenger?

A Yes, sir.

Q Who was your passenger?

A Luis LaBoy.

Q And you went to this 24 Furman Street?

A Yes, sir.

Q What happened when you arrived at 24 Furman Street?

A Luis LaBoy told me, "Stay down here," he'll be right back. He went upstairs. While I was waiting this car drove up and there was Jose LaBoy that came out with an unknown person.

THE COURT: While you were waiting in front of 24 Furman Street for Louis LaBoy to return, a car came up alongside of you?

THE WITNESS: Right; drove and parked in front of me.

THE COURT: Car parked in front of you?

THE WITNESS: Yes.

Q Did anyone get out of the car?

A Yes.

Q Who?

A Jose LaBoy and an unknown person.

Q Do you know who that other person is now?

A Yes.

Q Who is that other person?

A Israel Rodriguez.

Q Is he the person who came down the stairs with Willie, too?

A No.

Q What did Jose LaBoy and Israel Rodriguez do when they got out of the car?

A They went upstairs at 24 Furman Street.

Q And after you saw Jose LaBoy and Israel Rodriguez go up the stairs at 24 Furman Street, what happened after that? What was the next thing you saw?

A Luis came back downstairs. He told me be at this apartment in 15 minutes. While I was waiting, Jose LaBoy and an unknown person came back down and they drove away.

THE COURT: Got in the other car?

THE WITNESS: Yes, sir.

Q And what did you do when Luis came down to you and told you to meet him at his apartment?

A I came back and got in the phone booth and told Agent Melvin what happened.

Q Did Agent Melvin tell you to do anything?

A Yes.

Q What did he tell you to do?

A He told me to go there and make sure they had cocaine so we could go back and do the buy.

Q And after speaking to Agent Melvin, what did you do?

A I went on my way back to 88 Stone Avenue. My car broke down. I run out of gas and they came and helped me and gave me a hand.

THE COURT: Who came out and helped you?

THE WITNESS: Willie Cruz.

THE COURT: Where was Willie? Was Willie in another car?

THE WITNESS: He was in a car.

THE COURT: Was that the first time you saw Willie that day?

THE WITNESS: No, sir.

THE COURT: When you arrived at 24 Furman Street, did you see Willie?

THE WITNESS: No, sir.

THE COURT: Well, the last time you left 24 Furman Street, that was after you saw Jose LaBoy and Israel get into a car and drive away?

THE WITNESS: Yes, sir.

THE COURT: And then you called Melvin, he told you to go to 88 Stone Avenue, you had a car break down or lack of gas, then Willie appears on the scene?

THE WITNESS: Yes, sir.

THE COURT: I don't understand that. How does he appear? Where was he hiding?

THE WITNESS: He was following me.

THE COURT: He was following you?

THE WITNESS: Yes.

MR. PELTZ: He now claims that Willie followed him fromwhere?

Q Did you see Willie at 24 Furman Street at all?

A I didn't see him at all.

Q When did you first see Willie at first that day?

A He just happened to appear.

THE COURT: You mean it's only an opinion that he was following you?

THE WITNESS: Yes, sir.

THE COURT: Did he say he was following you?

THE WITNESS: No.

THE COURT: Any way, Willie appeared?

THE WITNESS: Right.

Q And did Willie say anything to you, not about getting gas, but about anything else?

A Yes, sir.

Q What did he say?

A He asked me if I came to talk about the deal, I said, "Yes, but I ran out of gas."

THE COURT: I don't know what he said. Willie said -- besides gas, did he offer you gas?

THE WITNESS: Willie know me. I saw him the 21st of November at the apartment.

THE COURT: Now, you are out of gas.

THE WITNESS: Yes, sir.

THE COURT: Now, what happened? What did Willie do?

THE WITNESS: He helped me out to get the gas.

THE COURT: You mean he pushed the car?

THE WITNESS: He took me in his car, took me to get a can of gas.

THE COURT: Did he say anything?

THE WITNESS: He said meet him at 88 Stone Avenue at the apartment.

Q After he helped you get gas, what did he do?

A He left and went wherever he went.

Q And what did you do after Willie left? Did your car now have gas?

A Yes.

Q What did you do?

A I drove to 88 Stone Avenue.

Q And when you arrived at 88 Stone Avenue, what did you do?

A I went upstairs, Apartment 2-L, Luis answered the door.

Q And was anyone else besides Luis there?

A Yes.

Q Who else was there?

A There was Jose LaBoy; Luis LaBoy; Israel Rodriguez and Willie Cruz and myself.

THE COURT: That's everybody?

THE WITNESS: Yes.

THE COURT: No more?

THE WITNESS: No, sir.

Q When you got inside the apartment, did you ask any of the people there about anything in particular?

A Yes, sir.

Q What did you ask about?

A Asked if the cocaine was ready to sell.

Q And what was answered and by who when you asked him if the cocaine was ready?

A It was ready but that night it would be ready when I came back.

THE COURT: Who said that?

THE WITNESS: Everybody there together. This is a four people operation.

THE COURT: Four of them said it was ready?

THE WITNESS: Right.

Q Did you see anything in the apartment at that time?

A Yes, sir.

Q Tell the jury, please, if you will, what you saw and how you came to see it. What happened in front of your eyes so that you could see something?

A Jose LaBoy took out this box.

Q Where did he take it out of?

A The closet.

Q And what did he do with it? What kind of a box was it?

THE COURT: Took out a box, was it?

Q Out of the closet.

THE COURT: Closet?

THE WITNESS: Yes.

Q What did the box look like?

A Like a toolbox.

Q And what did Jose LaBoy do with this box?

A Jose LaBoy got this bag out of it, a brown bag, and he hand it to Luis and Luis hand it to Willie and they put it on the table.

Q Did you have occasion to look into the brown bag?

THE COURT: This is a box we are talking about?

MR. ADLERSTEIN: Would you like the witness to repeat it?

THE COURT: Yes.

Q We have the toolbox that was handed from who to who? Who took it out of the toolbox?

A Jose LaBoy.

Q And who did Jose LaBoy give it to?

A He took the bag out of the box.

Q And what did the bag look like?

A It was a brown paper bag.

Q And what did Jose LaBoy do with this brown paper bag?

A He hand it to Luis LaBoy.

Q And what did he do with it?

A Hand it to Willie Cruz.

Q And what did Willie do with it?

THE COURT: What did Willie do?

THE WITNESS: He took another plastic bag out of it with a white powder and put it on the table.

THE COURT: You better ask it again, I don't see it. He got the brown paper bag out of the toolbox, Luis hand it to Willie and then I lost track.

Q Did Willie take anything out of the brown paper

bag?

A Yes, sir.

Q What did Willie take out of the brown paper bag?

A Plastic bag with a white powder.

THE COURT: Just one?

THE WITNESS: Yes, sir.

Q Where did he put this plastic bag with white powder?

A Put it on a table.

Q Was anything done with this plastic bag with white powder?

A Yes, sir.

Q What was done with it?

A Weighed it.

Q They had a scale?

A Right; a scale.

Q And did anyone put it on the scale?

A Yes, sir.

Q Who put it on the scale?

A Willie put it on the scale.

Q After it was put on the scale was anything done with it?

A Yes, sir.

Q What was done with it?

A They opened it and start tasting it, trying it out.

Q Who opened it when you say they opened it?

A Willie opened the bag and they handed it to everybody, see if you want to try it out.

Q Who handed it to who?

A Willie handed it to David to try it out.

THE COURT: You mean Jose -- now it's David?

THE WITNESS: To Jose.

Q How did Jose try it out?

A With a nail file,took some and sniffed it.

Q Did anyone else do the same thing?

A Yes.

Q Who else?

A Luis LaBoy, Willie Cruz, Israel Rodriguez.

Q After that happened, was anything done with the white powder?

A Yes, sir.

Q What was done with it?

A Wrapped it up.

Q Who wrapped it up?

A Luis wrapped it up and handed it to David.

THE COURT: Jose you mean?

THE WITNESS: To Jose; and put it back up for

later.

Q Where did he put it?

A Back in the box.

Q And was the box put anywheres?

A Back where it belong.

Q After this occurred, was anything discussed?

A Yes, sir.

Q What was discussed?

A What time I would come back and who was going to sell it.

Q And what was said?

A That when I come back there will be Jose LaBoy; Luis LaBoy and Israel to take care of the business, and don't worry about anything.

Q And was any time discussed?

A Yes, sir.

Q What time was mentioned?

A 3:30.

THE COURT: Then they told you to come back at 3:30 that same day?

THE WITNESS: Yes.

Q After that occurred, what did you do?

A I left the apartment and went to the nearest phone booth and called Agent Melvin, told him what happened,

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but he said he couldn't make it 3:30, go back and tell them it would have to be between 5 and 6 o'clock the same day.

Q And did you in fact go back to the apartment at 3:30 as Agent Melvin instructed you to do?

A Yes, sir.

Q Who was at the apartment at that time?

A Luis was at the apartment and I told him.

Q Luis was there alone at that time?

A Yes.

Q And what was said?

A That we couldn't make it till 5 o'clock and he said it was O.K.

Q And after you spoke to Luis and told him this time, what did you do?

A I went back to the phone and Agent Melvin told me where to meet him, arranged time to meet to go back there.

Q And then did you leave the vicinity at that point?

A Yes, sir.

Q Did you have occasion on December 3 to meet Agent Melvin that day?

A Yes, sir.

THE COURT: This is the same day.

Q This is the same day; and where did you meet

Agent Melvin?

A At Utica and Atlantic Avenue.

Q And did Agent Melvin do anything when you met him?

A Yes, sir.

Q What did he do?

A Searched me for drugs.

Q And with what result?

A No cocaine.

Q Did you have a discussion with Agent Melvin at that point?

A Yes, sir.

Q And please tell the jury what this discussion consisted of.

A I told him we were going and everything was ready, and he was telling me how it was going to take place, instructing me how it was going to take place.

Q As far as these instructions to you, did you plan out to do anything in particular when it took place?

A Yes, sir.

Q What did you plan to do?

A Whoever had the cocaine, if anybody had the cocaine with them, I must take my hat off, that way they know somebody had the cocaine.

Q Were other agents there at that time?

A Yes.

Q And were they told the same thing by Agent Melvin and yourself?

A Yes, sir.

Q And then where did you go if anywheres?

A We drove up to Sumner Street.

Q And who did you go with?

A Agent Melvin.

Q And where did you park?

A Same place, Sumner between Stone and Rockaway.

Q So again around the corner and halfway down the block?

A Yes.

Q And this time was Alberto Quinones with you?

A No, sir.

Q When you arrived there with Agent Melvin around the corner from 88 Stone Avenue, when you arrived at the scene, what did you do?

A I got out of the car, walked up to the apartment on 88 Stone Avenue.

THE COURT: This is what time?

THE WITNESS: This is about a quarter past five.

Q And what apartment did you go to in particular?

A Apartment 2, 2-L.

Q And when you arrived at that apartment, did you see anyone there?

A Yes, sir.

Q Who was there?

A Jose LaBoy; Luis LaBoy and Israel Rodriguez.

THE COURT: Only three?

THE WITNESS: Yes, sir.

Q And when you arrived at that apartment, what was said?

A They were talking about who was going to take the package downstairs, the cocaine.

Q Who was talking about who was going to take the package downstairs?

A Arguments between Jose and Luis who was going to take it downstairs.

Q And was it decided who was going to take it downstairs?

A Yes.

Q And what decision was made?

A That Luis would take it downstairs.

Q What happened after that time, after that decision was made that Luis would take it downstairs?

A Luis would take it downstairs and Jose LaBoy

and Israel Rodriguez would stay back in case of any rip-off, protecting the deal.

Q What specifically did Jose LaBoy say he would do if he said anything?

MR. PELTZ: Object to the leading.

THE COURT: Ask him if he said anything. Objection sustained.

Luis was to take it downstairs and Israel Rodriguez and Jose would stay back?

THE WITNESS: Yes.

THE COURT: Inside the apartment?

THE WITNESS: Right behind the deal.

THE COURT: They would all come out together but you and Luis would go first and those two would come right behind you?

THE WITNESS: Protecting.

THE COURT: I see. All right, don't lead.

Q After this decision was made, what occurred?

A Jose LaBoy and Israel left the apartment; Luis LaBoy took the cocaine, put it in his pants.

Q Where was the cocaine when he put it in his pants?

A Took it out the box and put it in his pants.

THE COURT: Well, this was not a brown bag.

THE WITNESS: Same bag.

Q All you saw this time was a bag?

A That's correct.

Q And you saw Luis LaBoy put it in his pants?

A Yes.

Q How was the bag originally taken out?

A Jose took it out and gave it to Luis and he put it in his pants.

Q And then after that happened, what happened?

A They decided to walk in front of Israel and Jose left the apartment and Luis and myself stayed there for about one minute.

Q Jose and yourself stayed there for one minute?

A For one minute.

Q Jose and yourself?

A Right -- Luis and myself; Jose and Israel they stepped out.

THE COURT: They went first?

THE WITNESS: Yes.

THE COURT: Before you said they would stay behind.

THE WITNESS: They said they would stay behind but they went first. When the deal is taking place they are going to stay behind.

THE COURT: How did you come down the steps on 88 Stone, did you come down first or second?

THE WITNESS: You have to understand I have to stay back to make sure that Agent Melvin --that the DEA know who has the package.

THE COURT: You stayed back with Luis, with the one who had the package. So they went in front of you, but they were just, as you say, agreed to be behind you in the sense of protecting you but physically they were in front of you?

THE WITNESS: Yes, sir.

Q Now, when you went downstairs at 88 Stone with Luis and got outside, what did you see?

A There was Jose and Israel waiting for us downstairs.

Q Where was Jose and Israel?

A Down at the stairs. We are outside now. Down the stairs.

Q And were they immediately in front of the building when you saw them?

A Right.

Q And then what occurred?

A Jose LaBoy came out and he said something to Luis LaBoy, then he stepped up front and Luis LaBoy and myself

walked away.

Q How long was this conversation between Jose LaBoy and Luis LaBoy?

A About a minute, short, brief conversation.

Q And what did you do after this brief, short conversation?

A I stayed with Luis LaBoy. We walked up towards where Agent Melvin was.

Q And do you know where Israel Rodriguez and Jose LaBoy was while you were walking up the street to Agent Melvin?

A Where a car was parked on the corner of Sumner Street.

Q And then what did you do after you were walking down the street?

A I took Luis LaBoy to the car where Melvin was, he stepped in the back of the car, I stepped in the front.

Q And was anything said between Luis LaBoy and Agent Melvin inside the car?

A Yes, sir.

Q What was said?

A Luis LaBoy asked for the money and as soon as he was going to pull it out of the bag, Agent Melvin pulled out a gun and put him under arrest.

Q And did anything else happen in the car?

A They start running, there was a run up and down.

Q In terms of Luis LaBoy, did anything else happ n with Luis LaBoy when he was in the car?

A Yes, sir; Agent Melvin took a bag away from him with the cocaine and told him to put his hands up, put on the cuffs and other agents came out and asked me was anybody else on the deal. I said, two other guys. I said it was Jose and Israel.

Q Did you tell him where they were?

A I said there were two other guys, the guys who were in front of us.

(Continued on next page.)

Q Those two other guys?

A Yes, Jose and Israel.

THE COURT: When did you take off your hat?

THE WITNESS: Right before I got out of the apartment.

THE COURT: When you came out you were bare-headed then?

THE WITNESS: Right.

MR. ADLERSTEIN: Your Honor, I have no further questions.

CROSS-EXAMINATION

BY MR. PELTZ:

Q I'm the defense attorney, Philip Peltz. I'm going to ask you questions now.

Have you discussed this case before today with any other attorneys?

A No, sir -- Yes, sir.

THE COURT: I don't know if he understands. Any other attorneys other than the U.S. Attorney.

THE WITNESS: Yes, sir, except Mr. Adlerstein.

Q Except for Mr. Adlerstein?

A Yes.

Q Who else did you discuss it with?

A There was an attorney Jonathan Marks who had

the case before.

Q How many times did you discuss it with Mr. Marks?

A Twice, I'm not sure,but I think it's twice we reviewed the case.

Q And in addition to Mr. Marks, who else did you discuss it with in the U.S. Attorney's office?

A Mr. Adlerstein.

Q How many times did you meet with Mr. Adlerstein?

A Today is the fourth time -- fifth time -- Friday.

Q Go ahead, did you want to say something?

A I'm thinking, it's five or six times. I was here Thursday, Friday, because they keep changing dates, but I've been here quite a while.

Q Didn't you also discuss it with another Assistant Attorney?

A No, sir.

Q Did you ever meet a gentleman with a beard in the U.S. Attorney's Office?

A Which gentlemen?

Q Mr. Corcoran.

A I don't know Mr. Corcoran.

THE COURT: You met no one with a beard?

THE WITNESS: To discuss the case? I never met nobody with a beard to discuss the case. You have a

beard.

Q Did you ever discuss the case with Mr. Kimelman?

A I don't know Mr. Kimelman.

Q Did you discuss the case with Mr. Melvin, the case agent who was sitting here before?

A He's the agent who worked with me on the case.

Q I'm asking you if you did.

A No, we had no reason to discuss the case.

MR. ADLERSTEIN: Your Honor, may I approach the sidebar?

MR. PELTZ: He could have redirect, if he wants.

THE COURT: There might be something else so you better come up.

(Whereupon, a sidebar conference was held.)

MR. ADLERSTEIN: I wanted to note to you that I don't believe the witness misrepresented the facts when Mr. Peltz asked him if he discussed the case with Agent Melvin. Agent Melvin was in my office every time that the witness spoke to me. He didn't discuss it with me directly but he was there with us and discussed it.

THE COURT: You asked him questions along that line. You could ask him those questions.

MR. ADLERSTEIN: One other point. The next

witness I intend to put on is Agent Melvin. If he doesn't take the rest of the day, I just got word the other agent who was supposed to be put on the stand is still in Newark, New Jersey. I directed him to be here.

THE COURT: There is going to be problems.

MR. ADLERSTEIN: I directed them to be here since last night. They are before Judge Hunt, United States Magistrate.

THE COURT: Tell them to be here.

MR. ADLERSTEIN: I directed them to be here. They made an arrest last night. I told them to be here. I told them to be here last night.

THE COURT: Drug Enforcement Administration?

MR. ADLERSTEIN: Drug Enforcement Administration.

THE COURT: Send a message to them, if they are not here in time to permit me to have a full day's work, I am going to make a complaint.

MR. ADLERSTEIN: It was against my direction.

THE COURT: I'll make a complaint directly to Washington, if necessary.

MR. ADLERSTEIN: I understand, but I have directed them to be here.

THE COURT: Why don't they come?

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MR. ADLERSTEIN: They made an arrest, they said they are at a hearing in Newark.

THE COURT: You tell them to come right away. Of course, I may not need both of them.

MR. PELTZ: If we continue the sidebar, we don't need either of them.

THE COURT: All right, let's go.

(Whereupon, sidebar conference was concluded.)

CROSS-EXAMINATION

BY MR. PELTZ (Continuing):

Q When was your shoplifting arrest?

A 1972 -- I'm not sure -- '72 -- between '72 and '73.

Q Was that here in New York?

A Ft. Knox, Kentucky.

THE COURT: Ft. Knox where he was stationed. You were then in the Army?

THE WITNESS: I was in the Army.

Q Was it on the base?

A No, sir.

Q Where was it?

A Off base.

Q Then it was a civilian arrest not a military arrest?

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A Civilian arrest. I was accused of shoplifting.

Q Were you innocent?

A Ten bags of Kool Aid.

Q Were you wrongfully accused?

A I was accused. What could I do? Why should I take 10 bags of Kool Aid?

THE COURT: I think we are trying this case, not the case of the arrest.

You pled guilty?

THE WITNESS: I had no choice. They took me down, fingerprinted me and I paid $50.

THE COURT: Did you have the Kool Aid on you?

THE WITNESS: The lady said I didn't pay for it. I spent $30 and she said --

THE COURT: You say you did pay for it.

THE WITNESS: I went in the store, I'm buying my groceries, the lady said I didn't pay for the Kool Aid, they took me down, they said I had to pay a fine of $50. I never heard about it.

THE COURT: That's enough of that. Let's proceed on this case.

BY MR. PELTZ:

Q Please tell us when and how you first became involved with drugs.

THE COURT: What do you mean? Are you involved in drugs? Ask him if he takes drugs but involved in drugs, I don't know what that means.

THE WITNESS: I don't understand, either.

BY MR. PELTZ:

Q When is the first time you had anything to do with illicit drugs?

A When was the first time?

Q When was the first time?

A The time that Jose -- a fellow named Jose, I get a bag for him and he sold two bags of cocaine and I got $100 for it.

THE COURT: That's another Jose, you better make it clear.

Q When was that?

A In 1974.

Q 1974?

A Before I met Agent Melvin.

Q How many people were involved in that drug transaction?

A Which one?

Q The one we just talked about with an Jose.

A You want me to tell you? I just had the person who wanted to buy the cocaine, I took them to the apartment.

They made a deal, I stayed outside. I came out, they give me a hundred dollars. I went about my business. I don't know about nothing else. That was it.

Q Did you have any further drug dealings with the people from that first drug deal?

A I can't understand what you are asking me.

Q You just told us that you took somebody to an apartment.

A Right.

Q And you waited outside and that your participation in that drug transaction was introducing a buyer to a seller?

A Right.

Q And who paid you the hundred dollars?

A The seller.

Q Was the seller the one whose apartment it was?

A No.

Q The seller was the one you brought to the apartment?

A The seller is the one I took to the apartment.

Q And he brought a package with him and apparently left it in the apartment, collected money and gave you $100 for your troubles?

A Right.

Q Did you have anything to do with that fellow regarding drugs after that transaction?

A I had nothing to do with him.

THE COURT: Anything further?

THE WITNESS: You mean any other deals? No.

Q That was it?

A I helped him -- trying to make Agent Melvin meet him, tried to make him sell some drugs to Agent Melvin.

Q You are trying to now?

A Right.

Q Do you know how many people were inside that apartment?

THE COURT: Which apartment, which time?

Q The one apartment, the first drug deal.

THE COURT: What date was that?

THE WITNESS: That was about two months before.

THE COURT: September 1974, about?

THE WITNESS: No.

THE COURT: This was in December, was it not?

THE WITNESS: Between April and May.

THE COURT: We'll call it the May deal so he can identify it. We are talking about the May deal now, Mr. Peltz, right?

MR. PELTZ: Very good, sir.

BY MR. PELTZ:

Q Do you know how many people were inside the apartment that you brought your seller to?

A Three people.

Q But you waited outside the apartment?

A Yes.

Q First you were inside then you went outside?

A Right.

Q Was there a reason for that?

A I didn't want to get involved. I didn't want to get arrested. I didn't want to go to jail.

Q At that time were you working in the Accounting Department?

A Yes.

Q At what hospital?

A Coney Island Hospital.

Q Are you still working there?

A No.

Q When did you start working at the hospital?

A October 1974.

Q Were you laid off?

A Part of the inflation.

Q It was both or part?

THE COURT: Part of the inflation he said.

THE WITNESS: Slow down, no work.

Q Then you got in the second drug deal which resulted in your arrest and your indictment; is that correct?

A That's right.

THE COURT: You weren't working at the time you got involved in the second?

THE WITNESS: I was working in the hospital at that time.

THE COURT: You said you were let out in October '74.

Q The second drug deal was in July of 1974?

THE COURT: I'm certainly mixed up.

MR. PELTZ: Perhaps I could clarify it.

THE COURT: The one we are talking about is December; isn't it?

MR. PELTZ: In this indictment?

THE COURT: Yes.

MR. PELTZ: That's December 21 --

THE COURT: He said he was out in October. As far as this particular transaction is concerned, at the time it took place, you were not working?

THE WITNESS: You mean this one with Jose?

THE COURT: This one.

THE WITNESS: I wasn't working at the hospital

at the time.

THE COURT: Or any other place?

THE WITNESS: I was unemployed.

BY MR. PELTZ:

Q At the time you got involved in your second drug enterprise you were still working at the hospital, weren't you?

A Yes.

Q Tell us how you got involved in that case.

A I had to sell -- somewheres I met Agent Melvin.

Q You had a seller?

A Jose was a seller.

Q In the second case, too?

THE COURT: I'm getting confused. I thought there was one case he had before this case and that was involving another Jose.

MR. ADLERSTEIN: There was testimony that that was the deal that happened before his arrest, then he had the deal with his arrest.

THE COURT: Yes.

When did you get your hundred dollars? You got your hundred dollars before you were arrested?

THE WITNESS: I got the hundred dollars before I was arrested.

THE COURT: Now you have the second deal, what date was that?

THE WITNESS: It was in July; July and August.

Q Now, was the seller in the July deal the same as the seller in what his Honor refers to as the May deal?

A No.

Q This was another seller?

A That's right.

Q Now have you yourself ever experimented with cocaine?

A You mean sell?

Q No, experimented?

A Try it out, check it out; no.

Q Exactly?

A No.

Q But you became involved with a second cocaine supplier?

A Yes.

Q And how did you meet him?

A I was in the street and he passed by. I knew he used to sell cocaine; I knew these people, I was living on the block. I heard about them. I was there with Agent Melvin and he passed by.

Q You were with Agent Melvin?

A That's right.

Q Before you even met this seller?

A I know him by seeing him. I know he sells cocaine.

Q Before you met the seller in the case which resulted in your indictment, did you already know Agent Melvin?

A Yes.

Q How did you meet Agent Melvin?

A A fellow by the name of Tony, he knows somebody who would like to buy drugs, and I gave him the number to call me at the hospital; Agent Melvin said he would come and talk to me at lunchtime. I went outside, he said try to get cocaine from him. I told him I was going back to the block and I'll set it up for him.

Q And you set it up?

A Yes.

Q And you set it up with Ramon Sanchez?

A With someone else; Jose was involved with it. The person didn't appear and while I was standing there with Agent Melvin, Ramon Sanchez passed by and I bring it to Agent Melvin's attention and I call him over and he said -- he asked me if I know Agent Melvin, I said, "Yes, I know him a long time ago."

Q You lied?

A I lied to Ramon Sanchez.

Q Why?

A So Agent Melvin could get what he wants.

Q Was it for your benefit?

A I didn't want to feel disappointed that I bring Agent Melvin down here and nobody shows for what he needed.

Q Were you to get anything out of this deal?

A The deal, if I could get -- I was to get something out of it.

Q From whom?

A From the seller.

Q From Ramon Sanchez?

A Yes.

Q How did you know that you were supposed to get something from the seller?

A Because you make a deal, you are not going to do it for free.

Q Had you done business with Sanchez before?

A No.

Q And from your experience in one prior deal you assumed by making this introduction, lying, if need be, you would pick up some extra money?

MR. ADLERSTEIN: Objection, that's a speech and

not cross-examination.

THE COURT: That's an argument. That's a conclusion.

Q Did you base your opinion that you would get something from Sanchez based on your one and only prior narcotic transaction?

A I had a furniture problem; Ramon Sanchez said I'll give you so much.

Q Did he say that to you in the street when you were with Agent Melvin?

A Yes, sir.

Q So you didn't assume it, he told you?

A Right.

Q How soon after your arrest did you decide to go back to work for Agent Melvin or any other Drug Enforcement Administration agent?

A Ten minutes.

Q As soon as you were arrested?

A Yes, sir.

Q You made that decision in the street?

A In the car on my way.

Q And you were then indicted and charged with three felony counts; is that right, sir?

A Yes, sir.

Q What arrangement did you make with Mr. Melvin 10 minutes after you were arrested?

A When I was in the car I made the arrangement with the person who was reading my rights.

Q Who was that?

A Jerry.

Q Jerry?

A I can't recall his last name. His name is Jerry.

Q What arrangement did you make with him?

A I said, well, you know, I didn't have nothing to do with it, I was lying. I would do anything to get out of it.

Q Would Jerry be Agent Gerald Kerr?

A I don't know his last name. I know him by Jerry.

Q Is he one of Mr. Melvin's partners?

A Yes, sir.

Q So you lied to him?

A I was lying. I said I didn't have -- to him -- I didn't have anything to do with it.

Q You said you would do anything to get out of it?

A Referring to what?

Q You just said something to us, and you said, "I would do anything to get out of it."

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A Right. When I say anything, other guys that sell drugs.

Q Did you say that to Jerry or is that what you thought to yourself?

A I said it to him. He said don't say anything, wait until you get in the office. When you get in the office, say anything you want.

Q You said before, "I would do anything to get out of it."

Was that something you thought or something you said?

A That's something that I knew I was going to do.

Q "Anything to get out of it."

A I said anything. I didn't mean I would go out there and kill somebody or lie for somebody.

Q You wouldn't go where and lie?

A I wouldn't lie to get out of something. I wouldn't lie to persecute somebody else.

Q You wouldn't lie to get out of jail?

A I would tell the truth.

Q Mr. Pineda, if you could tell a lie and that would keep you from going to jail, you mean to tell us that you would tell the truth and go to jail?

A Yes.

Q Even if that meant going to jail?

A Yes. I pleaded guilty. I knew I was going to jail, 15 years.

Q You say to go to jail for 15 years?

A Who knows.

THE COURT: He didn't say that.

MR. ADLERSTEIN: I don't mind the question being asked. The witness knows what's in his own mind.

THE COURT: Yes.

Q Have you gone over this already with Mr. Adlerstein?

THE COURT: What does this mean?

MR. PELTZ: This question, what you expect to get out of your case.

MR. ADLERSTEIN: I asked Mr. Pineda if he knew in advance what the Judge was going to give him, he answered, no.

THE COURT: And I think knowing the practice in this court and knowing the particular judge involved, he does not know what the judge is going to give him.

BY MR. PELTZ:

Q Have you ever discussed with Agent Melvin or with Jerry or with anyone at all what your sentence is going to be?

A Nobody knows.

Q I asked you if you ever talked to anybody about it.

A We don't know. I don't ask him. The judge is the one that's going to sentence me. I am just doing what I want to do.

Q Aren't you supposed to be sentenced tomorrow?

A Yes.

Q Is there a chance that you're going to go to jail tomorrow?

THE COURT: Now, how does he know that?

Q Do you harbor an expectation that you're going to jail tomorrow?

THE COURT: Expectation? I don't think that's a good word.

Q Are you planning to graduate September 29th?

A Yes, sir.

Q You certainly don't intend to be in jail September 29th?

A I know some day I'll get out.

Q You're going to postpone your graduation?

MR. ADLERSTEIN: May we approach the sidebar.

THE COURT: I'll make a statement.

What he expects to get out of jail or not, I think is only relevant insofar as it's brought out to

show that he might be testifying with the hope of getting some consideration. That's all. And it doesn't have anything necessarily to do with the question whether he's going to jail or whether he's not going to jail. That's something for the judge to decide. The judge will decide just what, if any, consideration he'll give. Now, that's all there is to it; and he hopes, and I'm sure he does hope that the judge will consider his cooperation in this case. Is that all you are talking about?

THE WITNESS: Yes.

THE COURT: Let's not waste any more time on that.

BY MR. PELTZ:

Q After you were in the car with Jerry you said, "We'll talk about it when we get to the office"?

A He said anything you want to say, wait till we get in the office, and that was it.

Q What happened when you got to the office?

A I got fingerprinted.

Q What happened with regard to your discussion about doing something or anything to get yourself out of it?

A What happened?

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Q Please tell us.

A I went out on bail, do what I have to do till when the time comes for sentence.

Q Did you have any discussion? Did you make any arrangements with any of the agents?

A What kind of arrangements?

Q That's what I would like to know.

A You ask me a question, you don't know, I don't know.

Q Did you have any conversation with Jerry or anybody about what kind of work you were going to do?

A Yes, sir.

Q When you talk about Jerry, is that Mr. Melvin? Who is Jerry?

MR. PELTZ: I assume Jerry is Gerald Kerr.

MR. ADLERSTEIN: The Government is willing to concede that's Jerry Kerr.

THE COURT: Who is he, a Drug Enforcement Administration Agent?

MR. ADLERSTEIN: Yes, your Honor.

BY MR. PELTZ:

Q Did you continue the discussion that you had started in the car when you got back to the office?

A There was no discussion. I went down there,

whether I go to jail or not, I said I'll work for the Drug Enforcement Administration and anybody who sells drugs that I know, I will tell them what happened and I'll bring an agent. That's it.

Q But you had a reason for doing this, didn't you?

A Of course I have a reason.

Q Naturally, you are trying to get yourself the best break possible, weren't you?

A Not only that, I know it's wrong.

Q What's wrong?

A Selling cocaine is wrong.

Q It's against the law?

A Right.

Q And that's your reason for helping the agent because you know it's wrong.

A I know it's wrong. I did it. And this is what happened to me.

Q Are you suggesting, sir, if you did not have an indictment pending against you in this court you would have been out in the street trying to make cases?

A Yes, sir.

Q When you tried to set up the deal between Mr. Melvin and Ramon Sanchez, did you know then that it was wrong?

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A I knew it was wrong but I said I had a financial problem.

Q And after you got arrested, did you not have a financial problem?

A I still have a financial problem.

Q Did there come a time when you got religion, so to speak?

A Religion?

Q That you realized that this was wrong?

A I always knew it was wrong.

Q But you did it becase you had a financial problem?

A I had an offer and I had the problem, I got stuck in it; that was it.

Q You say that now even if you didn't have an indictment you would be helping the agents?

A Yes, sir.

Q Is that because you have a financial problem?

A No, I like -- because it's wrong -- because it's what I want to do.

Q You like working for the agents?

A I like it. I like the job. It's exciting.

Q And you also pick up some pocket money, don't you?

A From who?

Q Do the agents give you expense money?

A Yes, sir.

Q You told us you got caught. What expenses did you have?

A I told them what the problem was and they tried to help me out. They give me $65.

Q But you didn't actually have expenses for $265, did you?

A I did.

Q Expenses in connection with your work on cases or expenses, living expenses?

A Personal.

Q Not related to the case?

A Not related to the case.

Q Did you have to sign for these expenses?

A I had to sign for the money I got.

Q And you signed for it as expense money, didn't you?

A Right.

Q That wasn't true, though?

A I myself work, I had to get somebody to sell drugs. I got money for the days I missed, that's expense money.

Q You got paid for what you did?

A Right.

Q Do you expect they will continue to pay you when you need money?

THE COURT: Let's get to the real issue here.

Q So, going back to your case, you pled guilty to one count; is that right?

A Yes.

Q And were you told that the other counts would be dismissed against you?

A I'm not sure, but I think I heard that that was it. I'm not quite sure but I think that's it.

THE COURT: You were told that a motion would be made the day of sentencing, that the other two counts would be dismissed.

Q By the way, you told us earlier that you have a nickname, Panama?

A Yes, sir.

(Continued on next page.)

Q Was that also the nickname of Ramon Sanchez, the drug dealer you were arrested with?

A They call me Panama; they call him Panama, that's not his nickname.

Q Do you know whether he was indicted as Panama?

THE COURT: I don't know whether this has to do with this case. I chink that's all irrelevant, and I suggest you get along with the issues involved here. I don't see what the indictment of anybody else has to do with this case.

MR. PELTZ: Defense would like to offer photocopies of the indictment of Albert Pineda.

THE COURT: I don't know what the Assistant U.S. Attorney is doing.

MR. ADLERSTEIN: I have no objection.

THE COURT: All right, put it in. Let's go.

MR. ADLERSTEIN: I did bring out on direct examination that he was indicted. I see no reason why the jury shouldn't have it.

THE CLERK: Defendant's Exhibit A, photocopy of indictment No. 74-CR-565, United States vs. Albert Pineda and Ramon Sanchez, marked in Evidence.

(So marked.)

MR. PELTZ: Could we have the caption of that

again?

THE COURT: I don't want to waste any more time on this. Let the jury look at it when they go in.

BY MR. PELTZ:

Q How many cases are you working on now for the agents?

A How many cases am I working on, or how many cases I already worked on?

Q How many cases have you worked on?

A Five cases.

Q Have you made any written notations as to any of those cases?

A No, I haven't written anything.

Q You trust your memory?

A Yes, sir.

Q Do you at any time make reports to Mr. Melvin or any of the other agents of the Drug Enforcement Administration?

A When we go out I have to make a report, what happened and when we come back, I sign a statement.

Q And do you go over those statements before you sign them?

A Yes.

Q Are those statements true?

A Yes.

Q Are they accurate?

A Accurate -- that's right.

Q Are you at all nervous testifying here in front of a jury?

MR. ADLERSTEIN: I'll object to that.

A Nervous about what?

THE COURT: The jury can determine whether he is nervous or not. They don't need a statement.

Q Is the only record that you participate in making, the written report that you signed up at the Drug Enforcement Administration's office?

A I read it as truth.

Q You tell them what to write?

A We go out on something, they ask me questions, what took place and then we verify the truth and then I sign it. I read it over and sign it.

Q If there are any mistakes in it, you correct it?

A Right.

Q And there is no rush when you do those reports, is there?

A There is no rush.

Q When is the first time you made any reports in

connection with this case that you are testifying about?

A I haven't written any reports. I sign them, I verify that they are true.

Q I don't mean write it, I mean orally tell the agents so they could type it up for you.

MR. ADLERSTEIN: If he remembers, your Honor.

Q If he remembers.

A When was the first time -- what was the question? When was the first time I signed a report in this case? I don't remember. This guy's case.

Q This guy's case.

A The first time I signed a report or the first date Agent Melvin went with me, the 21st of November, after the next day, what happened, called me up at the office. We write down what happened, what time, where, and then I sign it.

Q You said that a report would have been made on or about November 22nd.

A When they get it ready, they call me up. I read it and sign it.

THE COURT: If you have a report signed by him, why don't you show it to him and ask him if that's the first one he signed, otherwise we could waste a lot of time, which won't accomplish anything.

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MR. PELTZ: I have several reports bearing the same dates.

THE COURT: Show it to him. It has his signature on it. He could testify whether that's his signature, and there you have the date, and I think as good as that you are going to get.

MR. PELTZ: If your Honor will permit, I'll come back to that.

Q When did you meet Alberto Quinone for the first time?

A I met Quinone in November. I met him in November, Rockaway and Herkimer Streets.

Q The first time you met him, did you talk about cocaine?

A Yes, sir.

Q Please tell us the conversation as best you can recall it.

A The first time I met him? I went down here, Asked if they know somebody who sells cocaine, they pointed out Alberto. I met him and we had a conversation. In the conversation I asked him, does he know where I could get cocaine, he said don't worry about it, he'll let me know who it is.

Q There was no exchange of cocaine that first day?

A There was no cocaine, just a conversation.

Q What name did you meet Alberto by?

A By Alberto. We have the same name. My name is Alberto, too.

Q You called each other Alberto?

A Yes.

Q You didn't tell him your nickname was Panama?

A No.

Q Tell me, please, how many times you have met my client, the accused in this case.

A I met him three times the day before the arrest, and he got arrested in the night and I saw him now.

THE COURT: About how many, six times?

THE WITNESS: In other words, me and him don't have no relationship. I go there, I see him there whenever we talk a deal and that's it.

Q Up until the day of the arrest, December 3, I want to know how many times you met him.

A Every time I went to the apartment he was there.

Q November 21st?

A He was there on the 21st.

Q November 27th?

A November 27th -- I don't know because we didn't go upstairs.

Q So you met him twice in the apartment; is that right?

A He was there in the day when I go there by myself to find out what's going on.

Q That was December 3rd?

A December 3rd --

Q You tell us how many times you met him.

MR. ADLERSTEIN: I think the witness has already answered that.

THE COURT: He answered that. I believe what Mr. Peltz wants to know is how many times he met him before the arrest, if you can remember that, you met him or saw him.

THE WITNESS: I saw him a lot of times running around, I had seen him.

THE COURT: He was arrested December 3?

THE WITNESS: Yes.

THE COURT: How many times did you see him before December 3rd, including December 3rd?

THE WITNESS: How many times I had seen him? About nine times.

THE COURT: You saw him nine times, that's before arrest?

THE WITNESS: Before arrest.

Q Please enumerate for us as best as you can each of the nine times.

A I seen him around the block in the car -- Rockaway -- What I'm trying to say, I've seen him but I never know --

THE COURT: Who he was?

THE WITNESS: Who he was. I didn't know he was involved with cocaine until we spoke about it in the apartment.

Q When is the first time you spoke to my client?

THE COURT: Or he spoke to you.

MR. PELTZ: Thank you.

A The 21st.

Q November 21st?

A No. November 21st was the first time I spoke to him that he talked to me about cocaine, and I was introduced to him as David.

Q You already knew Luis?

A I knew his face.

Q When did you talk to Luis for the first time?

A The same time I spoke to David. Every time I see Luis I see David.

Q The first time you saw Luis was in Luis' apartment?

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A Right.

Q Describe that apartment for us, please.

A You walk inside, there is a kitchen, there is a bathroom on your right; walk to your left there is a bedroom, keep walking there is a small living room.

Q The first time you went up there you were up there with Alberto; right?

A Yes.

Q And that was November 21st?

A No.

Q Before November 21st; is that right?

A The first time I saw him.

Q The first time you went to Luis LaBoy's apartment, Apartment 2-L.

A Number 88 Stone. I'm not sure. The first time I went up there -- it was before November 21st I went up there. It was before but I cannot remember the date. I went up there before. I took Agent Melvin.

Q How long before?

A One week -- weekend -- between 10 to 15 days, you know -- seven days.

Q How many times did you go up there before you brought the agent up; once or more than once?

A One time.

Q Just one time. When you went up there, you were brought up there by Alberto Quinone?

A Yes.

Q And he took you up there and he introduced you to Luis?

A He introduced me to Luis and Jose.

Q Who introduced you to Jose, Alberto?

A Alberto.

Q Did Alberto say this is David?

A Alberto said -- I think this is his cousin, they are family. He said this is my cousin Jose and Luis; Luis said this is David. I tell them my name is Panama.

Q Who else was in the apartment on this first meeting?

A On that day, Alberto, David, Luis and myself.

Q Just the four of you?

A That was the day before, that's before Agent Melvin knew these people existed.

THE COURT: That's before November 21st; right?

THE WITNESS: Yes.

Q And only four of you in the apartment; correct?

A Yes.

Q And the four of you spoke?

A We talked, we spoke.

Q And Luis and the accused both spoke at the same time; is that right?

A They get together -- agreement together.

Q Right in front of you?

A We all speakin, right, everybody talking.

THE COURT: They all speak Spanish?

THE WITNESS: All speaking Spanish. They weren't speaking English; no, sir.

Q All conversations were in Spanish?

A Yes.

Q You went back on November 21, right?

A Right.

Q And you went back on that occasion with Quinone, with Agent Melvin waiting around the corner; is that right? In his car?

A Yes, sir.

THE COURT: That's the time he said cocaine had already been sold?

MR. PELTZ: No, your Honor, that's another time.

Q When you went back on this occasion, and you brought Agent Melvin, was there supposed to be a transaction on that day?

A There was supposed to be a meeting. In other words, I went there with intention for Agent Melvin to meet

Jose and Luis so he could talk about the business. There wasn't no money. It was just a meeting to talk about business.

Q Agent Melvin had other cars with agents in the vicinity?

A I don't know.

THE COURT: Did you say you saw cars?

THE WITNESS: Anytime you go someplace you have to have somebody surveiling.

Q Is it your testimony on November 21, my client got involved with you in a conversation regarding narcotics?

A Yes.

Q And he spoke to you about prices and amounts of drugs?

A Yes, him and his brother Luis. Luis LaBoy, I guess it's brothers, they never tell me the truth. I wasn't interested in that. I'm only interested in where they have the cocaine; whatever is their problem is their problem. I go there for cocaine, do my thing and get out.

Q Isn't it a fact that all of your dealings on November 21 took place with Luis LaBoy and no one else?

A No; it was Luis LaBoy and Jose LaBoy.

Q As a matter of fact, didn't all of the transactions take place between Alberto Quinone and Luis?

A No, sir.

Q Didn't it happen something like this --

THE COURT: Remember what I told you, ladies and gentlemen of the jury, questions are unimportant, it's the answers.

Q At this point you had only met Luis once before; isn't that right?

A I beg your pardon?

Q It is now November 21st, you are in Luis LaBoy's apartment at 88 Stone Avenue, and I ask you at this point, is it not a fact that you only met Luis once before?

A Yes, I met him once before; before November 21, I met him.

Q Once before?

A And Jose; right.

Q And I'm asking you, if it isn't a fact that the conversation that took place regarding narcotics was between Alberto Quinone and Luis LaBoy?

A It was between Jose LaBoy; Luis LaBoy, myself, Alberto was just the middleman. He's the one that took me there.

Q He wasn't the one who was handling the transaction?

A No. He just took me there.

Q Which of you reported back to Agent Melvin?

A When?

Q When you left with Quinone.

A Both of us went back to the car.

Q Who spoke to Agent Melvin?

A I spoke to Agent Melvin and Alberto spoke to Agent Melvin, too.

MR. PELTZ: Your Honor, may I have this marked for Identification?

THE COURT: Yes.

THE CLERK: Defendant's Exhibit B, a document dated December 9, 1974, marked for Identification.

BY MR. PELTZ:

Q I show you Defendant's Exhibit B for Identification and ask you if you recognize that.

A You want me to read it?

THE COURT: No, it's not in evidence. This is 3500 material. It's used to refresh your recollection. You don't read it.

Q Do you recognize it?

A I have to read it and make sure -- Statements, like many times I'll have to read it.

MR. ADLERSTEIN: The Government would agree to stipulate that this is the statement that the witness gave on December 9, 1974.

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THE COURT: We are going about this so slowly. I don't want to put the jury to sleep. They will, unless you proceed a little more rapidly with the issues involved.

MR. PELTZ: Under the circumstances, I'm really doing the best I can.

THE COURT: Read the statement first.

MR. PELTZ: I have read it.

THE COURT: You will have an opportunity then having read it to ask him whether he said this, whether he said that, or whether there are any inconsistent statements in there as far as his testimony today is concerned.

THE WITNESS: That's what happened. What was the question?

Q Tell us if you recognize Defendant's Exhibit B for Identification, the paper in front of you.

A If I recognize this paper? Yes, it's a paper saying that the day we went up there --

THE COURT: Did you sign it?

MR. ADLERSTEIN: What may be creating some difficulty, this is a Xerox copy and the actual signature isn't on it, but this is something that he did sign.

THE COURT: He did sign it?

MR. ADLERSTEIN: Yes.

MR. PELTZ: Is that accurate?

THE WITNESS: Yes.

THE COURT: Well, you see -- can I see you at sidebar.

(Whereupon, a sidebar conference was had.)

MR. PELTZ: Defendant offers this in Evidence.

MR. ADLERSTEIN: Your Honor has just told us --

THE COURT: If you object, I'll certainly -- I'll sustain the objection.

MR. ADLERSTEIN: I object.

THE COURT: Sustained.

MR. PELTZ: I offer it as a prior inconsistent statement.

THE COURT: If you have something inconsistent here --

Did you say that you met Luis only once more and doesn't this show you met him three times before, something like that, but you can't do it this way.

MR. PELTZ: This is a signed statement of earlier date.

THE COURT: You have to show whether it's inconsistent. I can't see where it's inconsistent.

MR. PELTZ: Quinone told Luis -- it shows all the conversation was with Luis.

THE COURT: It doesn't follow.

MR. PELTZ: With all due respect, if this was a prior request, your Honor would be right.

Please let me make an offer of proof.

Inasmuch as the Government has conceded that this statement was signed by this witness on December 9, 1974, I respectfully submit that it is admissible as a prior inconsistent statement.

THE COURT: Not unless you give him an opportunity to explain it, and I told you my ruling. You have your remedy.

MR. ADLERSTEIN: May we have a five-minute recess?

(Whereupon, the sidebar conference was concluded.)

THE COURT: They would like to have a five-minute recess, I'll stay here.

(Whereupon, a recess was had.)

(After recess.)

THE COURT: I'm sorry, ladies and gentlemen, that the tempo of the case is kind of slow but sometimes we cannot help it, but I must insist that everybody be certain that they keep alert to what's going

on because it's very necessary; everyone recalling what's happening here, and I do hope we have no lapses.

Very well.

BY MR. PELTZ:

Q On November 21st, when you and Alberto Quinone went to Luis LaBoy's apartment, did one of you tell Luis that somebody wanted to buy an eighth of a kilogram of cocaine?

A Yes, sir; that's the reason why we went there.

Q Who told that to Luis?

A Alberto and myself.

Q Did you also?

A That's the reason I went there. The reason I went there to get Melvin so we could buy some cocaine. I didn't go there to look at their place.

Q I'm asking about the conversation, not why you went there.

A You keep repeating the same question.

THE COURT: That's quite true; and that's why it takes so long.

Q Did Luis tell Quinone that he didn't want to sell that much cocaine to Agent Melvin because he did not know him?

A Luis was speaking to myself and Alberto. He was

speaking to both of us. He don't want to sell an ounce of cocaine -- four ounces because he never deal with me before. He wanted to make the first deal, get to know us, then sell us another one.

Q Did Luis make that statement, sir?

A David and Luis, both of them were speaking.

THE COURT: David and Luis both made the statement; is that what you are saying?

THE WITNESS: Both said it.

Q Isn't it a fact that Luis spoke to Willie and David, and that you didn't hear what was said amongst them, and that Luis then told Quinone that he would not sell the eighth?

A They were speaking in Spanish and everyone was speaking loud enough so you could hear what was going on, so I heard everything.

Q Wasn't the conversation between Luis and Quinone?

THE COURT: You have asked the question. He told you what the conversation was. Let's proceed to something else.

Q You say the conversation was between David or Jose; Luis, you and Alberto and Willie; is that right, and that both Jose, known as David,and Luis stated that they would not sell one eighth of a kilo -- four ounces?

THE COURT: It's too much at one time.

THE WITNESS: Yes.

THE COURT: That's his testimony.

You make the same answer that you have now given.

THE WITNESS: They speak Spanish. You asked me the same question over and over.

Q You then went back to the car; is that right?

A Went back to the car, Alberto and myself.

Q And you had a conversation with Agent Melvin?

A Yes, sir.

Q And as a result of that testimony was Quinone supposed to go back to the apartment?

A Yes, sir.

Q And before he got in the car to go to the apartment, what did Quinone say he was going to do?

A Quinone then said Agent Melvin say what to go up to the apartment and say.

Q What did Quinone say?

A It would be all right. He go up there and tell Jose, Luis and Willie what Agent Melvin said.

Q Didn't Quinone say he would go back and talk to Luis?

A Quinone say he's going back upstairs and talk to Luis, also Jose, also Willie, try to convince them what he

wants.

MR. PELTZ: I renew my offer of Defendant's Exhibit B.

THE COURT: I could tell you it's denied. I told you how to bring it out if you wish.

Did you say that David and Luis and Willie made no statements to you and Alberto, or did you just say that it was Luis who made the statements?

THE WITNESS: I said all of us participated in a conversation.

THE COURT: In this report you only say Luis made the statement. Did you make that statement in the report that --

THE WITNESS: If it's there, I said it.

Q He says David and Willie spoke to Luis in the report.

THE COURT: That's it, then.

MR. PELTZ: I submit that his testimony here as we've all heard, that David and Willie spoke to him.

THE WITNESS: It's david and Luis spoke to Willie. You are the one that's wrong.

THE COURT: You have to be more specific than this, Mr. Peltz. I'm not permitting that into Evidence. If you want to bring out and identify an inconsistent

statement -- we went over that a little while ago. You're going to have to proceed after I make a ruling. You have to go to something else. We're not going to stay on one little item the rest of the afternoon.

Q In your report, sir, look at the report, please. Did you say that Quinone said that he would take us to Luis' house to see if he had any cocaine?

A Quinone had to take us to Luis' house.

Q Sir, did you say --

THE COURT: Wait. Mr. Pineda, you just listen exactly to the question and try to answer yes or no if you can. We have your testimony, you don't have to repeat what you have already said. Listen carefully to his question and answer it yes or no, if you possibly can. If you have some further explanation to make as to that yes or no, counsel for the Government might be able to bring it out on redirect, but that's the only way we can make any progress. All right?

Now, what is your question?

Q Did Quinone say he would take us to Luis' house to see if Luis had any cocaine?

A Yes.

Q And did you say in your report that Quinone and myself got out of the car and went to Luis' apartment; Quinone

told Luis that Agent Melvin wanted to buy an eighth of a kilogram of cocaine?

A Yes, sir.

MR. ADLERSTEIN: Of course the report is not containing emphasis of a voice, it just contains those words.

THE COURT: He's just reading the report. You're not bringing out, Mr. Peltz, any inconsistent statements as such. You first ask him is it your testimony today so and so, and so, and is that in the report, but you're not doing that. This is just confusion where it's compounded. You can't do it that way, and I'm not going to permit it. You point out where he has made an inconsistent statement, or where he has testified today to something of materiality which he didn't include in his report. That's all there is to it. This has been done many times but not that way.

MR. PELTZ: Thank you.

BY MR. PELTZ:

Q Mr. Pineda, in your report did you say Luis spoke with Willie and David who was with him, and then tell Quinone that he did not want to sell that much cocaine to Agent Melvin because he did not know him?

A No.

THE COURT: What did you testify to today on that point? That's the point you are dropping out completely.

MR. PELTZ: I thought he already testified and that the comparison --

THE COURT: The jury doesn't know what you're trying to bring out. I don't know. First ask him this: Are you saying today that it was David and Luis that made this statement that they would not sell four ounces to you, or your buyer, because we didn't know you; is that your testimony today? If he says yes, did you say that in the report?

MR. PELTZ: I don't mind your asking him.

THE COURT: I'm not going to try the case for either the Government or you.

MR. PELTZ: You certainly clarified things on the direct case. I don't mind your doing it here.

THE COURT: I don't know what you're really aiming at. What particular statements are you saying is inconsistent? I can't find that yet. Maybe he failed to state everything in the statement, I don't know.

It's now half-past four, I'll give you 10 more minutes. We are not going to drag our feet this way.

We better get going. 15 minutes.

BY MR. PELTZ:

Q Is it your testimony that Luis told Quinone that he would not sell that much cocaine to Agent Melvin because he did not know him?

A Yes, sir.

THE COURT: Did you make that statement in the report?

THE WITNESS: Yes, sir.

THE COURT: Show him the report.

MR. PELTZ: That statement is in the report, that Luis said it.

THE COURT: What's it all about? Up to now three or four people in chorus, in unison, made the statement.

Is your statement today that David made that statement?

THE WITNESS: In the statement I put down here that Luis said they will not sell the cocaine, but as a statement, and what happened, it was Luis and David and Willie, everybody took part in it.

THE COURT: To that extent the statement is not fully complete.

THE WITNESS: You have to make it as short as you

can. You can't make a song.

MR. PELTZ: I ask that that last statement be stricken as gratuitous.

THE COURT: I'll ask the jury to disregard it.

Which is correct, your testimony today or --

THE WITNESS: My testimony, and the statement, both of them is correct. Whatever the statement says is true, and my confession is true.

THE COURT: But your statement today is more than what's --

THE WITNESS: It's the truth. What happened, everything is true.

Q (Continuing) Did you go over this statement with any of the agents or the U.S. Attorney in preparing to testify?

A When, today?

Q Before today.

A I went over this statement before I signed it.

THE COURT: He's talking -- what he's trying to point out just before you got on the stand, did you go over this statement?

THE WITNESS: I read it.

THE COURT: How long ago?

THE WITNESS: I read it yesterday.

THE COURT: Yes.

Q When did you remember that you left things out of this report?

A I didn't leave anything out; it's what happened.

Q Is there anything left out of the report, or is that a complete story of what happened on November 21st.

A It's a complete story.

Q Are you telling us if what you testified to doesn't agree with the report, that what you have testified to today was not correct and that the report is correct?

THE COURT: No, he's testifying the other way. What he says today is correct and he says that report is an abbreviated report, and while he only says Luis, the actual fact is that it includes David and Jose, as far as the discussion is concerned about the one-eighth of a kilo.

MR. PELTZ: May I approach the sidebar, your Honor?

THE COURT: Yes.

(Whereupon, a sidebar conference was held.)

MR. PELTZ: I mostly respectfully object to the capsuling --

THE COURT: Overruled.

MR. PELTZ: -- most favorable to the prosecution.

THE COURT: I'm trying to help you because you haven't been able to properly question this man.

MR. PELTZ: I would like to renew my offer.

THE COURT: Overruled. Proceed with the cross-examination.

MR. PELTZ: May I renew --

THE COURT: Proceed immediately. You are wasting time.

MR. PELTZ: A lot more time involved for my client, your Honor.

(Whereupon, the sidebar conference was concluded.)

BY MR. PELTZ:

Q Sir, in your report did you say that Luis said he would sell Agent Melvin one ounce of cocaine for $1300; if the deal was all right, he would sell him the rest for $1300 per ounce?

A Yes.

Q Was it Luis who said that?

A Luis said it and Jose participated in the conversation.

Q Is it now your testimony that not only Luis said it? Where in your report do you say that anyone else participated in that part of the conversation?

THE COURT: That's the way you ought to ask the

question before as well as now. Show him the report.

MR. PELTZ: He has it in front of him, your Honor.

THE WITNESS: Where it says what? What was the question?

MR. PELTZ: Can I have it read back?

THE COURT: The part of the conversation you referred to.

THE WITNESS: Luis spoke with Willie and David, so they participated in the conversation. If they weren't participating, he wouldn't speak with them. He wouldn't have to speak with them.

Q Where in your report, sir, do you anywhere say that Willie and David spoke to you?

A What do you mean spoke to you?

THE COURT: Is there a question pending?

Q I asked him where in the report he says that Willie and David spoke to him.

THE COURT: Well, let him answer the question.

A Where does it say that both of us spoke to him -- I say they agreed together and Luis spoke to them. They get together, argue the point and all three can't answer at the same time, so I have to speak to one person at a time.

Q Is it now your testimony that only one person

spoke?

THE COURT: No, that's not his testimony. He said one person spoke at a time. Ask him what his testimony is today as to this matter.

Q Sir, on direct examination, did you testify that everyone in the apartment spoke at once?

A Everyone in the apartment there together and they get an agreement and they say it's O.K.

THE COURT: We'll give you five more minutes on this. We are not going to spend the rest of the afternoon on this.

MR. PELTZ: May I renew my offer?

MR. ADLERSTEIN: The Government withdraws its objection.

THE COURT: It's not the way it's done. The jury can decide.

THE CLERK: Defendant's Exhibit B --

THE COURT: You're going to --

MR. PELTZ: Can I read it to them?

THE COURT: No.

THE CLERK: -- marked in Evidence.

MR. PELTZ: I didn't begin my cross until this afternoon. He had him all morning. Can I pass it among the jury?

THE COURT: Later on. I want you to proceed. I don't want it to go to the jury now. I want their attention addressed to the other questions you are going to ask and the answers.

MR. ADLERSTEIN: I just wanted your Honor to know there will be none beyond Agent Melvin to testify.

THE COURT: It's still 25 minutes to 5, and the way we are proceeding -- you have redirect?

MR. ADLERSTEIN: A little bit.

BY MR. PELTZ:

Q Sir, was there a time with regard to your November 27th meeting that Alberto said everything was set?

A Before November 27th; yes.

Q When was that?

A The day before.

Q Alberto said that the day before?

A And David picked them up and said everything was set.

Q Does that suggest Alberto had contact with Luis or anyone without you?

MR. ADLERSTEIN: Objection.

THE COURT: Sustained to what it suggests. When was this?

MR. PELTZ: The 27th.

Q Would you please describe for us the unknown person you saw with Willie on November 27th.

A With Willie or you mean--

THE COURT: Not Israel Rodriguez but the other person.

THE WITNESS: With Willie?

THE COURT: Coming down the steps.

THE WITNESS: I don't remember. It was night. It was dark.

Q You had a conversation at the time with Willie?

A Alberto had a conversation with Willie. I stand back.

Q You didn't participate?

A I was right behind. I didn't participate.

Q And Willie told Alberto that it was sold and that meant your trip was wasted; right?

A Right.

Q Were you disappointed?

A Yes, sir.

Q Would you please describe the building at 24 Furman for us.

A It's a two-family building. I'm not sure whether it's a three-family building. You go upstairs, there is some wood --

Q Have you ever been inside that building?

A 88 Stone?

Q No, sir, 24 Furman.

A No, I never been inside. It's a brick building.

Q It's a large building?

A Large brick building,never been in there.

Q Now, on December 3, is it your testimony that you saw my client come in and go out of 24 Furman?

A Yes, sir.

Q And who was with him?

A Unknown person.

Q You don't know who that was?

A No.

Q Do you know now who it was?

A Yes, sir.

Q Who was it?

A Israel Rodriguez.

Q So he's no longer an unknown person?

A That's right.

Q When, for the first time, did you meet Israel Rodriguez?

A In the apartment.

Q At Stone Avenue?

A At 88 Stone Avenue.

Q When?

A The 3rd of December, the date.

THE COURT: That was later?

THE WITNESS: I saw him in the morning when I went back to the apartment. He was there and then at night he was there. It was the first day I had to see him and that was it.

Q You didn't see him on November 20, November 21?

A No, sir.

Q By the way, on December 3, how did Luis get from Furman Street back to Stone?

A I was in a telephone booth.

Q When you took him --

A I took him to Furman, I didn't take him back to 88 Stone.

Q Weren't you supposed to wait for him?

A He told me be at this place in 15 minutes, 88 Stone.

THE COURT: He can downstairs?

THE WITNESS: He came downstairs and told me to meet him at 88 Stone Avenue in 15 minutes.

THE COURT: Did he go back upstairs then?

THE WITNESS: He went back upstairs then; I left.

Q Is it your testimony that my client took a box

out of a closet and took out a brown bag, which he gave to Luis, and Luis gave to Willie and Willie put on a table and on a scale?

A Yes, sir.

Q On December 9th you made a report pertaining to the report of December 3, didn't you?

A I don't know what date it was, but I made one. I signed one.

MR. PELTZ: May I mark this Defendant's Exhibit C for Identification.

THE CLERK: Defendant's Exhibit C a document, dated December 9, 1974, marked for Identification.

BY MR. PELTZ:

Q I show you Defendant's Exhibit C for Identification and ask you where in your report you mentioned that my client so much as touched any contraband in this case.

A I haven't seen it.

Q It's not in the report. Where in your report is there anything about Jose and Luis arguing about who would take the package downstairs?

A Can I say something?

Q Is that anywhere in your report, sir?

A When you make a statement in a report, you don't want to say they were arguing. You put down -- you don't say

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they were arguing, fighting, taking off clothes. I tell him the main thing. When he asked me questions, I tell him the main things that happened. I don't say they went to the bathroom. We don't need this. We are going for the main things, that's the reason why it's not in the report.

Q Sir, as a matter of fact, on the late afternoon of December 3, 1974, when you got to 88 Stone, wasn't my client asleep in that apartment?

A Sleeping; no. He wasn't sleeping.

Q You did put in your report though, as we left the building David came and spoke with Luis and then David went to the corner and remained there with a guy I didn't know."

Did you put that in the report?

A Yes, that's what happened.

Q Did you hear what they said?

A No.

Q Was that important?

A It wasn't important to me because I already knew what was the story. They already said they will stay back to protect the deal.

Q Who said that?

A David and Israel.

Q Israel said that?

A David and Israel.

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Q Where in your report do you have David saying it?

THE COURT: Look at page 2.

MR. PELTZ: Maybe I could save some time and offer this as Defendant's Exhibit C in Evidence.

THE COURT: It has a story in here, put it in.

THE CLERK: Document marked as Defendant's Exhibit C, dated December 9, 1974, marked in Evidence.

THE COURT: Let's proceed.

BY MR. PELTZ:

Q When you were in the apartment on December 3 before you went down stairs with Luis, did you tell anybody who you got there?

A How I got where?

Q To 88 Stone.

A Of course they know I got there in a car. I have people waiting for me, the man that's doing the buying. I told them there was a car waiting.

Q Tell us exactly what you told them about a car waiting.

THE COURT: Who is them?

MR. PELTZ: Whoever is in the apartment, your Honor.

A Exactly what happened?

Q Yes, exactly what you said about Agent Melvin waiting in the car, as best you can remember.

A "Are you ready, my man is downstairs in his car."

Q Is that everything you said about the car?

A "My man is in the car," that's it.

Q I want you to tell the ladies and gentlemen of this jury whether this is everything you said about the car.

A Sir --

Q Did you --

THE COURT: Let him finish.

A I didn't go upstairs to describe a car. I went upstairs to get cocaine. I didn't go upstairs to describe this fellow's car.

THE COURT: Did you say anything else about the car?

THE WITNESS: No, the car was downstairs. I didn't want to sell a car; I went to buy cocaine.

Q You didn't tell anybody where the car is?

A Where is the car -- around the corner.

Q Did you say around which corner?

A I'm the one that's taking Luis to the car. I worry about his having the cocaine. I didn't want to sell no car.

Q Where is the nearest phone booth to 88 Stone?

A The one I went to is on Fulton Street, the one I usually use. I never went back there for any research.

Q How far is the one you use?

A Three blocks away.

Q If you stated that you went to the nearest phone booth, that wasn't exactly correct?

A You don't expect me to go in a phone booth where they could see me. I have to go to a phone booth where nobody knows where I'm at.

Q Do you know anyone who lived at 24 Furman Street?

A As far as I know, Willie's supposed to be living up there, whether he lives there or not, I don't know.

Q But Willie was supposed to live there?

A Correct.

Q And do you know if someone was supposed to live there with Willie?

A I do not know. Luis took me there and said Willie lives there. I don't know anybody in that building.

Q When was the first time you heard of Willie?

A The first day I met Alberto.

Q Alberto told you that Willie --

A That he exists.

Q Did Alberto tell you that Willie was the source to get cocaine?

A They don't want to tell me who is the one. The purpose of selling the cocaine is not to know who you are getting it from, in case you get arrested.

Q Did they tell you who his partner was?

A Willie told me who his partner was.

Q Did he tell you my partner is David?

A Willie, David, Israel.

Q Isn't it a fact that Willie has a partner named David, and you are assuming that my client is that person?

A I'm not assuming. I went there, I spoke to Willie, David, Israel. I have been told, "This is my man. This is my man." I'm not assuming anything.

Q Aren't you trying to make yourself a lot more important in this transaction?

MR. ADLERSTEIN: Objection.

THE COURT: That's objectionable.

Q Now, sir, in the last paragraph of each of these statements, don't you include a statement that no threats, force or promises or rewards have been made to you, and this statement is freely and voluntarily given?

A Whatever is here is nothing but the truth, and I read it to the best of my knowledge, and that's it. There is no threat that ever existed in no statement.

Q Didn't the agent promise to make a report to

Judge Costantino; the U.S. Attorney, that you were helping them?

A Not a report, just tell them what I've been doing. It's not a promise. He's going to show to the Judge the work that I have been doing for them.

Q That's not a promise?

A You say a promise. He wants to show them what I did.

Q That was your agreement?

A You got to come to the Judge --

Q Are you hoping to get a break from Judge Costantino?

THE COURT: Didn't we go all over this a number of times when you began the cross-examination? Now, I think the jury got the point. Let's not waste any more time on it.

Q By the way, did you tell us that when Luis got into the car he pulled out the bag?

A As soon as he was to reach for the bag -- he didn't have no chance, he got arrested right there. Agent Melvin took the bag out.

Q So he did not pull the bag out?

A He was too late, he was already arrested; Agent Melvin pulled the bag away.

Q In preparing to be a witness in this case, did you go over your report and the agents' reports with anyone?

A My reports in preparing for a witness? I went over the whole case with Mr. Adlerstein, over and over.

Q You went over the whole case over and over. And in doing so, did you go over your report?

A I read part of the report. This thing happened a year ago.

Q And did you also go over any of the agents reports in preparing, or did you only go over your own?

A I went over my own report, things that happened in my case.

Q Who provided you with copies to go over?

A Mr. Adlerstein got the report on the table. He said, Why don't you check this out for a while and read it. That's it.

Q And then you went through some question and answer session?

A Right, he asked me questions.

Q And Agent Melvin who was present in court was present there also?

A Yes.

Q Was he present at all of the sessions?

A Yes.

Q Whatever they were, four or five or six?

A Yes.

MR. PELTZ: I have no further questions.

THE COURT: Any redirect?

MR. ADLERSTEIN: Yes, your Honor.

REDIRECT EXAMINATION

BY MR. ADLERSTEIN:

Q Mr. Pineda, I believe you testified as to the reason that you left Gouverneur Hospital. Did you testify to that?

A Not really went into detail.

Q Why did you leave Gouverneur Hospital?

A Because I had another case in the hospital. To avoid problems, it was the best thing to leave.

Q Did the case involve people who were at the hospital?

A It involved the people in the hospital, a man who worked with me with Agent Melvin.

THE COURT: You had a narcotic case at the hospital?

THE WITNESS: It involved some pills.

MR. ADLERSTEIN: I have no further questions.

THE COURT: All right.

MR. ADLERSTEIN: Can we have Agent Melvin?

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MR. PELTZ: May it please this Honorable Court, ladies and gentlemen of the jury:

Before I comment on the facts of the case may I very briefly thank all of you for your participation as jurors on behalf of all of us.

At the outset I would like to say my remarks now are based on my notes which were made sometimes hastily during the course of the trial and from my recollection of the testimony. If your recollection differs from anything I say disregard what I say, your recollection governs. You folks are the supreme judges of the facts just as his Honor in this court is supreme on the law. So if you find that in your opinion I have made an error or a mistake or a misstatement, will you please accept my apology in advance and would you assume that it was not intentional and it was just an error on my part.

Similarly, if there is a dispute amongst one juror and the other eleven or six and six or whatever about any of the testimony which was adduced during the trial you will have the right and I am sure the Judge will tell you about it, to have any or all of the testimony read back by addressing your request to the Court. You also have a right to examine any or all of the exhibits which became evidence during the trial and there are some exhibits that the defense offered and I

know you have not had a chance to look at them yet. I will be referring to them briefly during my summation. I invite each of you, after his Honor charges you on the law, to read them. I submit that inasmuch that they are in evidence they are as much a part of the case as any word that was heard and I invite you to look at them and pass them amongst yourselves to decide upon them. They could very well be dispositive of the case.

Folks, I sincerely hope that in presenting the defense for my client that I did not offend any of you. I mayhave seemed over zealous to some of you. However, please consider that I was trying my best to protect my client's rights and I ask if any of you would have expected any less of your own attorney.

THE COURT: Well now you see, no personal references. Make comments on the evidence only.

MR. PELTZ: You may all recall that Judge Bartels asked some questions that may even have seemed personal during the voir dire. Well, we counsel took pains in our selection of the jury too. All of us wanted to satisfy ourselves that you folks could sit fairly and impartially as the triers of the facts in this case. We all wanted to be certain we would have a jury of just, fair and courageous people who would follow the law of the Court and, of course, I will ask

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you to hold the prosecution to its burden as his Honor will delineate.

As the final stage of the trial and shortly, I guess tomorrow morning, you will be called upon to stick to your oaths as jurors.

Is your Honor charging today?

THE COURT: Absolutely.

MR. PELTZ: Later today you will becalled on to hold to your oath as jurors.

At this point I am going to seek to point out to you some of the reasonable doubts which I saw from the evidence and from the testimony that came in these days and last week. Please remember that it only takes one reasonable doubt as to the guilt of the accused to justify an acquittal. I submit that if you are still keeping your minds open, if you will consider logic and reason and not be swayed by emotion or bias, I submit I can show you not one, not two but several reasonable doubts.

It is entirely possible that in preparing my closing argument I may have overlooked something that any one of you jurors may have picked up on his own or her own. Twelve heads are better than one. If so, I invite you to discuss your version of the case as you saw it from the evidence with the other members of the jury. At the conclusion of the

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summations by the lawyers for both sides his Honor will charge you the law and I ask you until such time please withhold judgment.

If you will bear with me a little longer I will offer my analysis of the evidence. A reasonable doubt can come from the evidence or lack of evidence, from what a witness did say or from what was brought out on cross examination. At the outset I offer you this proposition: If each and every one of you believe that Alberto Pinata did not lie to you on any material aspect of this case, if you believe he told it to you honestly and truthfully and accurately and correctly, I invite you to consider convicting my client.

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On the other hand, if you should feel that he did not give you an honest, accurate accounting and did not tell it to you as it was, if he misled you, if he lied to you, if it could have happened another way other then the way he recounted it to you, then I submit to you you ought to resolve that doubt in favor of the accused and find him not guilty.

I am not asking you to shield my client behind a shadow of a doubt. I submit to you, however, that I will show you and you will see a case so full of reasonable doubt, so full of holes, so permeated with doubts that it is cross ventilated. You may recall that the Honorable Judge Bartels told you at the very beginning this was a simple case which

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suggests no complex issues of fact or law. While it may be simple in that respect this case is no less important than a case involving Watergate or Mr. Mitchell.

THE COURT: No, Watergate and Mitchell is out.

MR. PELTZ: Or anyone else as far as we are all concerned. This is the most important case imaginable certainly to the accused himself.

The policeman in this case corroborated and my client admitted that on the late afternoon or evening of December 3 he came out of 88 Stone Avenue and the various police also told you something about a street corner where his car was parked and the attempt, as they described it, or as Mr. Carr described it, to get out of there in a hurry, as the prosecution may say, to flle, to run away, although I do not recall anybody putting up the slightest resistance once they were confronted by the police. All of the police witnesses told you one thing in common.

THE COURT: They are not police exactly, they are federal agents.

MR. PELTZ: They are your Honor.

All of the Government witnesses whom I refer to as police, the agents, told you one thing in common, they told you as a man, not only the agents but all the witnesses, no one of the witnesses and I am not counting Pinata now on

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the prosecution case, told you that the man I know as Ray Laboy who is accused here as Jose Laboy, not one of them told you he possessed, sold or distributed any of the cocaine enumerated in the indictment.

MR. ADLERSTEIN: Your Honor I object to that statement.

May we approach the side bar on that?

THE COURT: All right.

(A side bar was held without the hearing of the jury as follows:)

MR. ADLERSTEIN: Your Honor, Mr. Peltz misstated the testimony of one, constructive possession. I think it is misleading when he says the agents did not testify he possessed.

THE COURT: You mean physical possession?

MR. ADLERSTEIN: Mr. Peltz can clarify that or your Honor.

THE COURT: What is the time limit here? You are not going to take an hour.

MR. ADLERSTEIN: I will try to keep it to a half hour.

THE COURT: And you too?

MR. PELTZ: No I cannot.

THE COURT: Why not?

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MR. PELTZ: Because we are losing five minutes right now.

THE COURT: How long a time do you think you are going to take?

MR. PELTZ: I will take about three quarters of an hour.

THE COURT: I doubt it, I have news for you.

MR. PELTZ: We sat here for a half an hour. I was ready to go.

THE COURT: You will get five minutes back.

MR. ADLERSTEIN: A[illegible] the constructive possession?

THE COURT: Well I think you can refer to that. I mean you are talking about actual physical, you make that clear then. You are talking about actual, physical possession. I think he is talking about actual, physical possession as distinguished from constructive possession.

MR. PELTZ: Absolutely.

(The side bar was concluded)

MR. PELTZ: As I started to say when I was interrupted and as you heard as to the testimony, not Carr, not Jones, not Melvin, certainly not Jeffrey Weber, could say that they sa[illegible]ay Laboy in physical possession at any time.

THE COURT: Jeffrey Weber was a chemist.

MR. PELTZ: That is correct.

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THE COURT: He was never offered to show that the defendant had physical possession. He was a chemist who analyzed the substance.

MR. PELTZ: That is correct. Then I am stating a truism.

No one of them could say that they in any way ever saw or knew my client to be in possession of the Government's main exhibit.

By the way I do not think any of us will or should and I hope no juror will get an impression that any one of us is expressing by word or deed our opinion to substitute for yours as to innocence or guilt. That decision is to be yours and yours alone made from your view of the credible evidence under the law as his Honor will charge you.

I ask you folks to call it as you see it without bias or prejudice. Do you think that the agents in this case did that? Don't you think that the Drug Enforcement Administration team in this case is seeking a win? Don't you think that they are out for a conviction? Every bit as much as the defense? We are living in a real world and we should recognize that people involved in a case are subjective, human and that is why an impartial jury is so very, very all-fire important.

Drug Enforcement Administration men, Government agents, just like other humans or police, can be known on

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occasion to exaggerate and yes perhaps even to lie. One of the reasons a prosecution has the burden, which his Honor will enumerate and which never shifts from the prosecution to the defense, is that if a defendant loses he risks a lot more than anyone else in any other litigation.

For those of you who have sat in civil cases and perhaps not in criminal cases, a man who loses in a serious felony case like this against the United States of America he loses far more. Of course, punishment is not to be considered by you, his Honor will tell you so.

But I ask you this: If you left it to the Government agents prosecuting a case or to the police making an arrest, would they not tell you that anyone they picked up was guilty? And is that the case? Is everyone arrested, is everyone indicted guilty? You see, the police do not have the same rules as his Honor is going to lay down for you. They are not bound by the presumption of innocence or the truth of guilt beyond a reasonable doubt. That enters into the picture in the courtroom. May I presume to say that a reasonable doubt is not to be used as an excuse for avoiding a disagreeable task. By the same token I submit it would be a dreadful miscarriage of justice to convict Jose Ramon Laboy of a serious felony because you do not like people who have anything to do with drugs.

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David Rodriguez testified that he shared an apartment with Willie Cruz. Did that make David guilty of any crimes? I doubt that any one of us is free, completely free of prejudice but I ask each and every one of you not to tolerate any prejudice in the jury room or in your deliberations.

Wouldn't just about any young man living i.. certain areas of the city and in the inner cities have friends or acquaintances or sometimes even family --

THE COURT: We must stick to the evidence in this case. There has been no evidence of that effect, you cannot comment on it.

MR. PELTZ: The prosecution went to great lengths on cross examination of defense witnesses as to their friends and neighborhoods an effort I submit --

THE COURT: You said it is well known. Read the statement.

(The statement was read)

MR. PELTZ: As to who may have some involvement --

THE COURT: Involvement is not the end.

MR. PELTZ: I had not had a chance to finish.

THE COURT: Maybe I anticipated what you were going to say.

MR. PELTZ: Who may have had some involvement with

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or exposure to drugs or drug dealings.

THE COURT: That is exactly what I thought you were going to say. There is no evidence that people, a lot of young people have neighbors and friends who have some involvement with drugs. That is not before us. We do not know that. You have no evidence to that effect. It has not been introduced in this court and that is the sort of thing I am obligated to bring to your attention. Limit yourself to the evidence in this case.

MR. PELTZ: Your Honor I think I am referring to guilt by association.

THE COURT: If you want to talk about the particular point of being in 88 Stone Avenue at the time when others were there, that is another matter. But not the general proposition that you are speaking about of people or a young man having friends in a neighborhood where there has been association with drugs. There is no evidence to that. Maybe there is such a situation but there is no evidence here to justify general statements you have made referring to neighborhoods. You have not had that evidence and I do not want you to refer to anything except what is in evidence. That is what we are here to do, not your opinion and not your general observations. That is not before theCourt and is not before the jury. What is before the jury is this evidence and the inferences to be drawn and

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you may draw logical or inferences that can usually be drawn from the evidence, nothing more. There has been no evidence as to association with people in neighborhoods and with others involved in drugs. There has been no such evidence.

Very well, proceed.

MR. PELTZ: Thank you.

Doesn't this case really boil down to the question of the veracity and the believability of Albert Pinata? Did Panama have a reason to lie? Would you think it fair to call him a man who by his own admission would do anything to stay out of jail? Do you think for a moment he believed himself what he told us, that he might get up to fifteen years? He told you he was expecting to graduate September 29 and that he was studying to become a security -- some kind of special officer he so enjoyed the work he was doing. He is actively working on cases for the Drug Enforcement Administration and yet he told you he thought he might go away for fifteen years. Do you think for a moment he would risk putting drug dealers in jail if he were going to jail himself?

THE COURT: Now wait a minute. Nobody knows whether or not he is going to jail.

He expects a lighter sentence but there is no evidence whatsoever that he is not going to go to jail. You

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just cannot make an argument that he is going to study and he is not going to jail because you have no evidence whatsoever to that effect.

MR. PELTZ: May I not comment about the operation of a man's mind?

THE COURT: You certainly can but there is no evidence whatsoever that he ever said he is not going to jail. He never said that.

MR. PELTZ: I am asking if the jury thinks he believed what he said.

THE COURT: I do not know that is relevant either. The question is is it true. I do not know what you are talking about. He has a hope and an expectation of getting a light sentence. You may emphasize that if you wish but to say what it is is going too far because he cannot know what it is.

Go ahead Mr. Peltz. We have had this again and again here, it is nothing unusual.

MR. PELTZ: I did not know your Honor was finished. I thought you were still lecturing.

THE COURT: No, I am not lecturing at all.

MR. PELTZ: Do you think he would live fifteen years or fifteen months or even fifteen weeks in jail under those circumstances?

THE COURT: "Live" did you say?

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MR. PELTZ: Yes your Honor.

THE COURT: You mean he cannot live in jail? What are you talking about? I do not know what you are talking about, live or get fifteen years or fifteen weeks.

MR. PELTZ: Your Honor, I am referring to the fact that although I am sure I have lost the thread --

THE COURT: Take your time.

MR. PELTZ: With the Court's interruptions, you told me to watch the time and you interrupt me now and you tell me to take my time.

THE COURT: All right, do the best you can.

MR. PELTZ: I wish your Honor would permit me to, I really do.

THE COURT: I will allow you to if you make a proper summation.

MR. PELTZ: What I am trying to tell the jury --

THE COURT: Suppose you tell them but do not tell the jurors that he is not going to get a jail sentence because we do not know that.

MR. PELTZ: But he said he expected a jail sentence. Didn't he say that Judge?

THE COURT: Yes that is right. Then why are you saying he is not?

MR. PELTZ: I submit he was lying, I submit he

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does not --

THE COURT: You have no basis for that, that is exactly it.

MR. PELTZ: Yes, Judge, I have every basis for it.

THE COURT: What is the basis?

MR. PELTZ: If this man really thought he was going to jail he would not be trying to fill the jails with drug dealers because they would cut his throat.

THE COURT: Do you have evidence of that? That is your opinion again, isn't it?

MR. PELTZ: That is not fair comment, sir.

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THE COURT: No, that is not an unfair comment.

MR. PELTZ: I most respectfully except to your Honor's ruling.

May we have a side bar?

THE COURT: No, proceed. Proceed with your summation.

MR. PELTZ: If the Court will permit me, yes.

Who is Panama Kid? Did you believe he spoke the truth when he testified? He testified as a witness for the prosecution and I submit very much as a member of the Government team. You heard him in court. Would any of you buy a used car from him or do you believe that if he needed money this man would say anything. Would you convict your brother,

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your father, your son or even a brother-in-law you did not like on his testimony?

THE COURT: Again you are going into the personality of the jury. You cannot take your personality or the personality of the jury, you know that, about your brother or father, you cannot do that in summation.

MR. PELTZ: I cannot?

THE COURT: No. Now proceed.

MR. PELTZ: If as Pinata testified, and you may recall he said this on the witness stand, something about Luis and my client having the same last name, you remember his saying that, why didn't he ever mention that in his report? Was he getting a little bit carried away with his own testimony on the stand, with his own position of importance? Is it fair to brand a man who has admitted on the stand two or three times to having lied, is it fair to brand him a liar? He admitted that he lied to the drug dealer he introduced Agent Melvin to and yes, at one point when the prosecutor confronted him, a man who said he would not lie under oath, about the very lie he told about the circumstances of leaving the hospital, remember he said he did it because of inflation and he was laid off or something? Yes, clever move on his part. He 'fessed up as he showed u. when confronted with a lie he would be forthright but neither I nor Mr. Adlerstein was at Luis'

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apartment on December 3 so that we could not really confront him with everything that went on there. Did the truth slip out when Pinata said on his direct or was it on cross that he would do anything to keep from going to jail?

No, he wouldn't lie under oath. Five minutes later right in front of your very eyes he lied. The prosecutor was forced to get back up and clear up the incident. Did he lie from habit? Is he a habitual liar? I think it is to the prosecutor's credit he did smooth it apparently as a harmless lie. I submit it gives us an insight into the quality of a witness that Pinata was. I think it tells us how little we can safely rely on his word.

It is not absolutely essential for you to believe any or all the witnesses for the defense in order to acquit but if you do, if you believed all of the witnesses for the defense --

THE COURT: How many witnesses for the defense?

MR. PELTZ: There were three.

If you believed the accused when he testified, fine, we would be able to go home early this afternoon. If you find my client's testimony had the ring of truth well great. But let us say a jury has some doubt about Ray Laboy's testimony or of either of the defense witnesses. I ask that jury what about Pinata and an admitted liar in this court? It

is quite true that a drug transaction does not take place right out in the open under cameras like a bank robbery and it is also true that the Drug Enforcement Administration does need informers to function.

An informer, as you saw in this case, can actually become a working member of the prosecution team. How then do I explain Pinata referring to the accused as David? I think it is simple but after hearing all the testimony what do you think? Is it possible they never were introduced? Is it possible that Pinata never knew him, never met him and spoke with him so that Pinata did not know that his name was Ray? You may recall that I elicited from Agent Melvin when he testified that Alberto Guinone heard him referred to as Popo before Pinata actively got into the case and he reported back to Mr. Melvin that Guinone had told him three names, Luis, Willie and David. As you know David was a witness this morning.

On the morning in question when Pinata went to 24 Furman Street, I think he drove Luis there, you remember he saw the accused and Israel Rodriguez on the day that the accused, when Ray went to pick up or borrow the tools, the day that he got arrested, the morning when he was given the small amount of cocaine by Willie. Is it possible that when Pinata saw Ray there he tried to put two and two together and

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got five instead. Is it possible he assumed that Ray was David? I cannot say to you now that every word that a witness utters whose veracity is in question is untrue. Any witness can tell the truth and exaggerate and be mistaken and lie.

I do submit that you folks are the shield between a potential corrupt informer working with possibly over zealous police and a conviction.

Let us look at what I submit to you is over zealousness on the part of the prosecution. Mr. Melvin, who sat through the trial, sat here in court and heard Pinata's testimony and then consciously or unconsciously got on the witness stand and parroted Pinata's testimony referring to "My people in the apartment." Yet, when I questioned agent Melvin and when we went through his reports he had to admit that nowhere in that report of the dates he was questioned about, did any reference appear from Pinata's reporting back to him other than Luis. What of Pinata who admitted under cross examination that the only name he knew my client by before the arrest is David but from the stand tried to tell us they were cousins or brothers and they knew this before the arrest because they had the same last name and yet we know and the reports disclose that he did not know the last names.

I ask you if you cannot tell for certain when a

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man is telling the truth and when he is lying how on earth can you convict anyone on his testimony? Did Pinata have a motive to lie? Now think in his mind he might have felt that if he got an extra conviction, if he is responsible for an extra arrest he would get points for it. Don't you think as his Honor suggested, that Pinata is looking for a break? Don't you think he would do anything to stay out of jail? Didn't he make it obvious he is anxious to be one of the boys, that he wants to be in tight and close with the members of the Drug Enforcement Administration. I do not doubt there is fine print somewhere that justifies giving him money but I submit that he is going overboard to try to earn it and justify it.

Without Pinata what do we have? We had another Government witness, Mr. C r, who was so anxious to make it seem like Israel and Ray ran away that he said that on December 3rd the car windows were open and they should have heard him when he started half up the block between Melvin's car and that car in an effort to make it seem as though they were trying to run away from the police or the Government agents.

A lot of testimony came in that may not have seemed entirely pertinent. It may have possibly seemed confusing. I refer to some of these issues as smoke screens and what I think is a very dangerous smoke screen is whether or not the small

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quantity of cocaine that the accused had, whether it originally came from the same batch as that which Luis was caught with. It is conceivable that they both got their cocaine from Willie Cruz because even assuming, but not conceding that the two cocaines came from the same batch, there is no proof that my client possessed or had intent to distribute the 114 grams mentioned in the indictment and I ask you whether the Government proved 114 grams or whether the chemist admitted that the cocaine here only weighed 81 grams.

Lest I be accused of trying to confuse anybody I know very well Luis Laboy is not here, Papo Guinone is not on trial nor is Willie or anyone else. We are only concerned with Jose Ramon Laboy, also known as Ray, who told you that he never, never answered to David.

What I submit is a smoke screen is whether his cousin lives near his mother, whether his cousin should have said don't come into the house, I may have a buyer for drugs, coming up here.

What did the cross examination of David Rodriguez establish? That he lived with Willie Cruz who apparently was into dealing cocaine. Does that in any way make David Rodriguez a criminal? No sir, and he went to school with Luis who you know has already pled guilty in this case. And that business about the electric bill, I ask you not to be distracted

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from that which was pertinent and which was credible.

In talking about the zealousness of the Drug Enforcement Administration team I must reluctantly refer to this chemist, Jeffrey Weber. How many analyses, although I did not ask him, do you think he does a day and has done since December 17, 1974? He had two samples and two laboratory reports and in his desire to convince us that these two came from the same source, with what audacity he said he based that conclusion upon the proportions. And what are proportions, percentages and we were supposed to accept that because it came from a Government witness, from the chemist.

I ask you what was the value of his conclusion on that point? Then he said he could be off two tenths of a percent and maybe he could be off one percent to try to suggest that the differences between 26.4 percent and 29.6 might have been due to some differences or errors in his equipment. But when we asked him on cross examination he said, he used the same equipment to test both batches and if there was an error it would have been the same way on both batches.

I think he was a very loyal man who displayed a great team spirit. I hope his Honor will not get angry if I call him a regular Rosemary Woods.

THE COURT: A what, Rosemary Woods?

MR. PELTZ: I was talking about the chemist.

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THE COURT: I thought I missed it. Just talk about the facts in this case.

MR. PELTZ: Unfortunately I am not Petrocelli, I am not Perry Mason, so I cannot show a video tape of the evidence as I view it. But perhaps I can offer another perspective and if you stay with me I think you will find it most interesting.

THE COURT: But that has nothing to do with this case.

MR. PELTZ: Absolutely nothing.

THE COURT: Do not mention it by metaphor or simile or any other way because that is not talking about the facts of this case and you are to talk about the facts in this case alone.

MR. PELTZ: I suggested to you earlier that Guinone mentioned the names to Pinata, Luis and Willie. I suggest to you that Pinata is most anxious to appear to be a good team worker, most anxious to keep himself out of jail and he is quite interested in ingratiating himself with Mr. Melvin and the other members of the team who search him at least twice every time they see him.

Pinata tells Melvin everything. He holds back nothing, when he is debriefed he tells all.

Let me digress for a moment to these two very

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important defense exhibits, Pinata reports which are in evidence and although where the signature exists you are going to see a number, that was so I did not know who he was before the trial, his name would not become public knowledge. As you heard, we do not have trial by ambush, the law requires a certain amount of pre-trial discovery. Look at these reports please and see the absence of any reference to the accused just as Melvin's reports failed to mention Ray or Jose Laboy or Israel Rodriguez.

Of course there is a strong, concerted effort to make them appear to be lookouts and I will get back to that in a minute or so.

THE COURT: Do not talk too long. You have had forty minutes. How long do you expect to take?

MR. PELTZ: Well, without interruptions your Honor I probably would have finished in about fifteen minutes.

THE COURT: You want a whole hour?

MR. PELTZ: Fine.

THE COURT: No, he has to take time and I have to charge. We will give you ten more minutes, Mr. Peltz. There is no use in being cumulative in your summation.

MR. PELTZ: Let us look at Ray Laboy's version of what happened. They went to the car and they found it locked. Who leaves a car unlocked on Stone and Somers? Picture

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Laboy's testimony. Does it have the ring of truth to it? He does go up to his cousin's apartment and he does catch a few winks and he is working. And he does go down and he unlocks the car and reaches across and unlocks the passenger door and lets Israel Rodriguez in and he kicks over the motor and then his brother-in-law, Rodriguez, says to him, "Do you know what your cousin, your idiot cousin --"

THE COURT: Did he say idiot?

MR. PELTZ: Whatever he said, you know.

THE COURT: You are quoting from the testimony.

MR. PELTZ: I am not quoting from the testimony, Judge.

THE COURT: We have to be careful.

MR. PELTZ: And so Ray gets out of the car and he gets on to the corner and he starts to go back around to the house and he meets his idiot cousin and he has words with him and he does go back to his car and he angrily slams the door and he cowboys it out of there and he backs into a parked car and he stalls and gets locked up. And then you hear a police description that makes it sound like a getaway from the Great Train Robbery.

The prosecution gets the first word and the last word. I must attempt to anticipate what his arguments will be. You see, he is going to get a chance to answer me but no matter

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how I may be sitting there and busting with answers for what he says I cannot get up to respond no matter what flaw I may see in his arguments. I get no reply. Fortunately for Mr. Laboy we do have twelve of you who will get a chance in the jury room later on to reply.

When Agent Melvin prepared his report on November 21 you may recall he did it November 29th before the arrest. He made no mention of David or an unknown Israel Rodriguez or Jose Laboy because despite Pinata's testimony he saw them November 21 and he apparently omitted to tell the agent about them. I submit to you that if Pinata told Melvin that there were other people involved on November 21 Agent Melvin would have put it in his report. The names, the other people in a drug deal are important information, you do not leave that out of a report. Only on December 3rd when the accused and Israel Rodriguez were arrested because they had been in the apartment and because we are told they appeared to flee, then it was necessary to try to make a case against them. The prosecutor may say well Pinata's statements were prepared on December 9 but they did not have any notes.

r8 What did they look at when they prepared Pinata's statements? The statement of Melvin prepared on 11/29 referring to 11/21? The statement of Melvin referring to 11/27 prepared on December 2? And I submit to you that knowing we

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are getting it for the defense in advance they are going to make sure these reports are not inconsistent with another one and the very omissions from the Melvin reports were perpetrated in the later prepared Pinata reports.

You heard them all say they had no notes. An agent working very hard on cases goes back to prepare a report eight days later with notes.

On December 9 they did not yet have an analysis back that showed that what was on my client was cocaine and they could not add to the report of 11/21 after December 3 because the reports are prepared. You see that they are countersigned and they are circulated and there is no way once it is done you can get all the copies back.

And then there is another thing. Before December 3 there was still a Guinone. They could not know on the 11/21 report and on the 11/27 report that Guinone wouldn't be around on a trial to contradict Pinata. They would have to make those reports accurate because of the possibility that Guinone would still be around on the trial and maybe he would not be a willing member of the Government team.

THE COURT: I do not know what you are talking about Guione being around or not.

MR. PELTZ: Guinone was around until December 3 and then they had a transaction without him.

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THE COURT: Was there any evidence he is not around now or was not around then?

MR. PELTZ: He was not around on December 3. They could put anything in those reports and not have Guinone to contradict them.

THE COURT: How do you know Guinone is not around now?

MR. PELTZ: I am saying he was not around December 3.

THE COURT: Go ahead.

MR. PELTZ: I could not find him. Do you get what I am trying to say? I am saying Pinata could say anything happened in that apartment on December 3 when he took over reporting from Popo, from Albert Guinone because who is going tocontradict him except the other guys?

I submit to you that somebody however did contradict Pinata. Inadvertently Agent Jones contradicted Pinata and corroborated the testimony of Mr. Laboy. Agent Jones told you that a few minutes, and this is not a Laboy witness, this is a Drug Enforcement Special Agent, a few minutes after Pinata went up Ray Laboy and Rodriguez, the Laboy who is on trial, came down and five or ten minutes afterwards Luis Laboy and Pinata came down. Now why do I say that corroborates Jose Laboy and contradicts Pinata? What Pinata told you what

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happened in the apartment then could not have happened there was no time. The Jones testimony corroborates the defendant's own story.

I am not saying the police got up on December 3 and said, let us frame Jose Ramon Laboy. No, he was in the apartment and then he was on the corner and like a jerk he had those things on him. So he made himself a very --

THE COURT: Three more minutes.

MR. PELTZ: He made himself a very convenient target. And then he backed up like a cowboy, like a Speedy Gonzalez though Agent Carr exaggerated a little bit.

Then we have the chemist and Blackburn. Did you hear him when I asked him if he questioned Mr. Laboy about those items that he found on him. What did he try to slip in "Oh he will deny it, they all do." But Mr. Laboy testified and he did not deny it.

I do not say that every prosecution witness lied about everything they testified to. I do not say you should believe Pinata only when he admits to a prior conviction for shoplifting or to his prior drug dealings.

THE COURT: Is that the testimony of Pinata?

MR. PELTZ: Yes sir.

THE COURT: I think you are right, on direct.

MR. PELTZ: Yes. What I do say to you is if a man

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has shown himself to be an unreliable witness because he has admitted to lying on and off the witness stand you should consider his testimony as unreliable. If you do not know when he speaks the truth and if you do not know when he lies, if you do not know when to believe him, then you should not convict on count one or count two.

If you doubt Pinata's word, if you have the kind of doubt that would cause you to hesitate in your own important affairs then you should acquit. I am willing to concede Pinata is a highly experienced liar. Do not let him sell you a bill of goods.

And you heard from the agents. They do not expect a conviction on Pinata's word alone. It is a heavy burden for the prosecution to carry. They live in a real world too. When they make their deals invariably an undercover agent, a courageous agent, a Melvin or Jones or somebody is right in there and makes the buy. I do not say they have the cream of the crop as informants and that is why they search and they search. Ordinarily they make it their business to catch the culprint red-handed with the goods through the use of informants. They make arrests and the Luis Laboys are caught and plead guilty or are convicted.

I submit Pinata either through accident or design saw a chance to embellish on his testimony and his value

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having heard the name used, the David apellation.

The Government, with what I call their lookout theory, --

THE COURT: You have two more minutes.

MR. PELTZ: I can finish in five.

THE COURT: You have already had 55 minutes.

MR. PELTZ: A third of that was interruption.

THE COURT: No so. Please go ahead.

MR. PELTZ: What is the function of a lookout?

THE COURT: You are not going to take long I will tell you that now.

MR. PELTZ: Is it to stay more than a half a block away? According to Pinata Israel Rodriguez had said that he and my client were going to protect against a rip-off. How could they from over half a block away and if you believe Agent Carr then why did they go the other way if they were going to protect Luis? If you for one minute believe Pinata's story that Ray and Israel went to protect Luis how come they went out of the house and went right to the corner where Ray's car was parked. Remember I asked him if he indicated in the apartment where his man was parked with the money and he admitted he made no reference to that. How did the supposed lookouts know which way Luis was going to go with the drugs?

What about the car? Do you roll your windows down

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on December 3?

Did the testimony of Ray Laboy have a ring of truth even under vigorous cross examination? I suppose I should have had him tell a store that coincided with the police testimony, yes, he stayed on the corner and so on and so forth. You could believe that and still find him not guilty. But I put him up there and let him tell it the way it was. Did he deny the possession that Blackburn attributed to him? Did he say he borrowed somebody's coat or he did not know what was in the jacket? That he only knew about the marijuana? I submit to you that the answer to every question that I have raised is one, Pinata lied, he perjured himself. He sold the police a bill of goods.

I say he was a good salesman, he was probably a drug salesman, maybe he still is. But please do not let him make a dope out of my client. One thing is clear, if you believe Pinata was lying, if you choose to disregard his testimony there cannot be a conviction in this case.

Let me put it to you in homespun fashion. You cook up a pot of stew and you learn some of the meat is bad. Can you pull out the bad meat? Can you take the chance or do you throw out the whole pot of stew? I say if you throw out Pinata's testimony you have to throw out this case.

I do not have to prove my client is innocent. In

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a way didn't I? Could you convict on Pinata's testimony and rest well? Do you think maybe Ray Laboy nervous and scared as he might be up there told you the truth?

His Honor is going to tell you the presumption of innocence is sufficient to acquit after hearing the prosecution case, wouldn't that be enough --

THE COURT: I do not know I would use exactly those words at all.

MR. PELTZ: Let us remember folks, we are weighing a criminal case on knowledge of --

THE COURT: Two minutes because now you have had fifty-three minutes and you have been warned a couple of times you cannot keep it up. I have warned you and you now must make up your mind to give your final sentence or final paragraph.

MR. PELTZ: Fortunately for the defendant there is a jury of twelve of you who have taken an oath and I pray to God that each of you will solemnly keep the oath and not let anyone else here substitute his judgment for yours. Please remember that Mr. Laboy is not on trial at this time for the possession of these other --

THE COURT: He is on trial for possession with intent.

MR. PELTZ: He is not on trial for these two

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things he has on his person not at this time. I am going to wrap it up now.

THE COURT: I will have to ask you to sit down. You apparently pay no attention to my instructions. You have been on fifty-five minutes. Do not throw your hands up that way. It is fair that you make your last sentence.

MR. PELTZ: Thank you for your attention.

THE COURT: There is one possibility. I can permit Mr. Adlerstein to proceed with the summation or we can take five minutes.

MR. ADLERSTEIN: Your Honor perhaps it would be best if we could have five minutes to stretch our legs.

THE COURT: All right. Ladies and gentlemen you must not discuss this case. We will take a short recess. I will give you your charge after Mr. Adlerstein has completed his summation and then you can deliberate.

(A short recess was taken)

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THE COURT: We will call in the jury.

Can we proceed with the summation? One of the jurors has cut herself.

JUROR NUMBER TEN: I am all right, Ihave a bandaid.

THE COURT: All right, proceed.

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December 9, 1974

STATEMENT OF SC140149 TAKEN AT THE NEW YORK REGIONAL OFFICE BY AGENTS RONALD P. MELVIN AND ROBERT JONES ON DECEMBER 9, 1974, RELATIVE TO THE MEETING OF AGENT MELVIN AND SC140149 WITH DEFENDANT ALBERTO GUINONE ON NOVEMBER 21, 1974.

On November 21, 1974, I met Agent Melvin at the intersection of Utica Avenue and Atlantic Avenue, Brooklyn, New York, at about 12:30 P.M. Agent Melvin searched me for drugs in the government car with negative results. A few minutes later Agent Melvin and myself drove to Herkimer Street and Rockaway Avenue, Brooklyn, New York. I got out of the car and went to a store on Rockaway Avenue where GUINONE was waiting for me. I told him my man was here and wanted to buy 1/8 kilogram of cocaine. GUINONE said he would take us to LOUIE's house and see if LOUIE had any cocaine. GUINONE and myself went to the car where Agent Melvin was waiting and the three of us drove to LOUIE's house. GUINONE and myself got out of the car and went to LOUIE's apartment, [redacted] LOUIE spoke with WILLIE and DAVID who were with him, and then told GUINONE that he did not want to sell that much cocaine to Agent Melvin because he did not know him. LOUIE said he would sell Agent Melvin 1 ounce of cocaine for $1,300.00 and if the deal went alright, he would sell him the rest later on for $1,300.00 per ounce. GUINONE and myself went outside and told Agent Melvin what LOUIE said. Agent Melvin told GUINONE that he didn't want to do business that way and that he would not buy less than 1/8 kilogram. GUINONE said he would go back and talk to LOUIE. GUINONE left the car and was gone for about 15 minutes. When he returned to the car, he said LOUIE would not sell more than 1 ounce the 1st time. Agent Melvin said that wasn't enough. The three of us drove back to Herkimer Street and Rockaway Avenue. Agent Melvin told GUINONE to get in touch with me if LOUIE changed his mind. GUINONE got out of the car and Agent Melvin and myself returned to Utica Avenue and Atlantic Avenue. Agent Melvin searched me again for drugs with negative results. I then left Agent Melvin and drove home.

I have read this statement consisting of one page, initialed my correction and signed the page. This statement is true and correct to the best of my knowledge. No threats, force or promises of rewards have been made to me and this statement is freely and voluntarily given.

/s/ SC140149
Signed

Witnessed by: _____
Ronald P. Melvin
Special Agent

Witnessed by: _____
Robert P. Jones
Special Agent

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December 9, 1974

STATEMENT OF SC140149 TAKEN AT THE NEW YORK REGIONAL OFFICE BY AGENTS RONALD P. MELVIN AND ROBERT JONES ON DECEMBER 9, 1974, RELATIVE TO THE ARREST OF LUIS LA BOY, JOSE LA BOY AND ISRAEL RODRIGUEZ AND THE SEIZURE OF 114 GRAMS (GROSS WEIGHT) OF COCAINE ON DECEMBER 3, 1974.

From photographs shown to me by Agents Jones and Melvin I have identified Luis LA BOY as being known to me as "LOUIE", Jose LA BOY as being known to me as "DAVID" and Israel RODRIGUEZ known to me by sight.

On the morning of December 3, 1974, I went to LOUIE's house and told him that Agent Melvin was still interested in buying cocaine from him. LOUIE told me that he didn't have any cocaine at the house, but he told me that he would take me to WILLIE's house and WILLIE would probably be able to get some.

We went downstairs and I drove LOUIE in my car to WILLIE's house. When we got by WILLIE's house, LOUIE told me to stay in the car and he would go up and speak to WILLIE. LOUIE got out of the car and went into 24 Furman Street, Brooklyn, New York. While I was waiting in the car, I saw two people enter 24 Furman Street together; one of them was a guy I had met at LOUIE's house on a previous occasion, who had been introduced to me as "DAVID", the other guy I didn't know. These two guys stayed in the building about 10 minutes and then came out, got into a car and drove away. About 10 minutes later, LOUIE came out and told me to go back to his house and that him and WILLIE would meet me there. I started to drive back to LOUIE's house and noticed that WILLIE was following me. My car broke down and WILLIE pulled up next to me and told me he would drive me to LOUIE's house.

When WILLIE and I got to LOUIE's apartment, LOUIE was already there. LOUIE then removed a quantity of cocaine from a box that was in the apartment. WILLIE took the cocaine from him and weighed it on a scale that was in the apartment and told me that it weighed 3 ounces. WILLIE told me that he wanted $4,800.00 for the 3 ounces. I told him that I would be back about 3:30 P.M. with Agent Melvin and we would buy the cocaine then. WILLIE told me that he would have LOUIE do the deal with Agent Melvin, because he did not know Agent Melvin and did not want to take the risk himself. I left LOUIE's apartment and went to a phone booth, called Agent Melvin and told him what had happened. Agent Melvin told me that he would not be able to make it until about 5:00 P.M.

I returned to LOUIE's house and told LOUIE that Agent Melvin couldn't get there until 5:00 P.M. LOUIE said that would be alright and that he would hold the cocaine until 5:00 P.M. Agent Melvin told me to meet him between 4:00 P.M. and 4:30 P.M. at the intersection of Atlantic Avenue and Utica Avenue in Brooklyn, New York. I went to this location and waited for Agent Melvin.

At about 4:30 P.M. Agent Melvin showed up at the meeting place. I got into the Government car and waited about twenty minutes with Agent Melvin while the surveillance units got into position. While we were waiting, Agent Melvin

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searched me for drugs with negative results. Agent Melvin told me that when I return to the car with LOUIE, to remove my hat if LOUIE has the cocaine on him. We then drove over to LOUIE's house and parked around the corner from his house. I got out of the car and went to LOUIE's apartment. LOUIE was in the apartment with the two guys I had seen going into WILLIE's apartment earlier that day. I told LOUIE that Agent Melvin was outside with the money. LOUIE took out a brown paper bag and in the paper bag was a plastic bag containing the cocaine. I asked LOUIE if the cocaine was good stuff and he said it was very good. The guy whose name I didn't know then said that him and DAVID would go downstairs and wait by the corner and make sure that nothing went wrong. DAVID and this guy then left the apartment. LOUIE put the cocaine in the waistband of his slacks and we went downstairs. As we left the building, DAVID came and spoke briefly with LOUIE, then DAVID returned to the corner and remained there with the guy whose name I didn't know.

LOUIE and I walked to Agent Melvin sitting in the Government car. I had my hat off when we left the apartment, so when LOUIE and I got into the car, Agent Melvin arrested him and took the cocaine from him. Several minutes later Agents Melvin and Jones drove me back to Atlantic Avenue and Utica Avenue where they searched me for drugs with negative results. I left the Government car and drove home in my own car.

I have read this statement consisting of two pages, initialed my corrections and the first page and signed the last page. This statement is true and correct to the best of my knowledge. No threats, force or promises of rewards have been made to me and this statement is freely and voluntarily given.

/s/ SC140149
Signed

Witnessed by: _____
Ronald P. Melvin
Special Agent

Witnessed by: _____

Special Agent

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Thank you very much for your attention.

THE COURT: Ladies and gentlemen of the jury:

You have listened most attentively to the testimony and to the summations of the attorneys. The testimony presented the facts through witnesses and exhibits. The summations presented the arguments of the attorneys, pro and con, concerning those facts.

The time has come for you and me to perform our respective functions in the trial of this case. You have been very patient. You have heard the voices of the attorneys and the Court and now your voice will be heard.

I wish to take the opportunity to extend to you my deep appreciation for your attentiveness, your alertness and patience during the course of this trial, and also for any sacrifice which each and everyone of you has made in neglecting your business or your personal affairs to see that the ends of justice is done between these two parties.

Every criminal prosecution is important to the Government of the United States and it is equally important to the defendant on trial. Each is entitled to equal justice at your hands.

From my experience, justice is best dispensed in a calm, patient, careful and deliberate manner, and I sincerely request you to keep that attitude throughout your

deliberations when you go into your juryroom. Of course, you should always respect the viewpoints of your fellow jurors. You should talk to each other with consideration and intelligence and decide the issues in this case on the merits and on the merits alone. However, each juror should reach his own conclusion, and no juror should surrender or compromise his own belief or conviction as to the innocence or guilt of the defendant.

The evidence consists of the testimony of the witnesses, the exhibits admitted into the record, and the facts that may have been stipulated by counsel. You must not consider any evidence which the Court has instructed you to disregard. I do not think I instructed you to disregard any evidence.

You have heard the evidence and the argument of counsel and it now becomes my duty to give you the law governing this case. It is your duty to accept the law as it is given to you by the Court and to determine the facts of the case for yourselves. The proper application of the law of the case to the facts of the case, as you find them, will determine your verdict.

I wish to make it very plain to you that the sole responsibility and the sole power in determining the facts are with you, and anything that I may say, or seem to

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say, as indicating any view or opinion as to the facts is to be completely ignored by you.

In determining the facts, you should not be influenced by any rulings that the Court may have made during the trial. Those rulings dealt with matters of law and not questions of fact.

The Court's ruling on objection made by any of the attorneys and any questions which the Court posed to any witness are not to be considered by you as indicating either the guilt or innocence of the defendant. The same is true with respect to any inflection of the Court's voice relative to any such matters or in connection with any comments or statements the Court may have made to any of the attorneys.

You may wonder why the Court asked the witnesses certain questions from time to time. The reason was that some of the testimony raised questions in the court's mind and the Court felt that those questions might have been also raised in the minds of the jury. For the sake of clarity only, were those questions asked, and they must not be deemed by you as any indication of any opinion that the Court might have in this case.

The Court expresses no opinion as to the guilt or innocence of the defendant. The determination of such guilt or innocence is a matter that rests exclusively with you.

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We come now to some general principles of law which are of importance in every criminal case, and I wish, first, to make some statements which apply to criminal cases in general; after which I shall endeavor to make clear to you those principles which apply to this case in particular.

We begin with the established principle that an indictment is but a formal method of accusing a defendant of a crime. It is not evidence of any kind against the accused, and does not create any presumption or permit any inference of guilt against this defendant.

It is also a principle well recognized in law that every person who is charged with the commission of a crime is presumed to be innocent and he is not required to prove that he is innocent. The burden rests on the Government to prove to your satisfaction beyond a reasonable doubt every element of the crime and that the party is guilty as charged. This presumption of innocence remains with the defendant all through the case until, if ever, it is overborne by proof which satisfies you beyond any reasonable doubt that the presumption of innocence no longer remains with this defendant.

This brings the Court to the important question of reasonable doubt. It is a question which in the ultimate analysis must be decided by you.

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The term "reasonable doubt" as used in this charge does not mean just any possible doubt you might have, but it means such reasonable doubt as a careful, prudent and reasonable man or woman ought to entertain in the circumstances proved. It means a doubt based on reason, and which is reasonable in view of all of the evidence. The key word there is "reasonable". A reasonable doubt may arise from the evidence produced or from the lack of evidence in the case. It is the obligation of the Government to prove a defendant guilty beyond a reasonable doubt but it is not required to prove a defendant guilty beyond all doubt or a shadow of a doubt. It is rarely possible to prove anything to an absolute certainty or beyond all possible doubt. Seldom can one prove a controversial fact with mathematical certainty. A reasonable doubt does not mean a vain, fanciful, vague or whimsical or imaginary doubt, nor does it mean a possible doubt created by a reluctance on the part of the jury to perform an unpleasant task. It means a doubt arising out of the evidence or lack of evidence which is a reasonable doubt. A reasonable doubt is a doubt that would cause prudent men to hesitate to act in matters of importance to themselves.

If after a fair and impartial consideration of all of the evidence or lack of evidence you have a reasonable

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doubt as to the defendant's guilt, then it is your duty to acquit him. On the other hand, if after a fair and impartial consideration of all of the evidence you believe that you have no doubt that is reasonable as to the defendant's guilt, then it is your duty to convict him.

One is said to be convinced in a case of this kind beyond a reasonable doubt when, after an impartial consideration of all of the evidence, one can conscientiously say to himself that he is convinced to a moral certainty of the truth of the charge.

Thus, you look at all the evidence introduced in this case and ask yourselves whether or not you are satisfied beyond a reasonable doubt that the offenses have been committed as charged in the indictment. If you are so satisfied, then it will be your plain duty to convict the defendant who has committed these offenses. But if there exists in your minds a reasonable doubt of the defendant's guilt, you must give that defendant the benefit of that doubt and acquit him.

If there are two reasonable conclusions equally supported by the evidence, one of which is consistent with the guilt of the defendant and the other which is consistent with his innocence, then you must adopt that conclusion which is consistent with his innocence and acquit him.

The question of reasonable doubt is one which can

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be determined only by you. It cannot be determined by arguments or opinion of counsel. In reaching a conclusion with respect to reasonable doubt you must consider all of the evidence together, not just a particular segment or portion of the evidence isolated from the rest of the evidence. You may have a reasonable doubt as to one item or two items which are not material to the case and yet have no reasonable doubt as to the charges in the indictment after considering all of the evidence. A reasonable doubt as to the innocence or guilt of this defendant is predicated upon all of the evidence.

The machinery of trial calls for the exercise of varying functions by counsel, by the witnesses who testify, by the Court that presides, and by you, the jury. You, as the jury, exercise the fact finding function. I may even repeat that to be certain that you and not I determine what the facts are.

You are the sole judges of the facts. That is to say, it is you who must consider the evidence, weigh this evidence, and draw inferences from the evidence, but only from the evidence and not from your imagination and not from what you might imagine happened or did not happen when there is no evidence to support it. That is out, it is only this evidence that you may consider. You may draw

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reasonable inferences from it.

You must distinguish between the mere arguments of counsel which have been made before you and the evidence upon which those arguments rest. The repetition of an argument, however often, and however loudly or dramatically it is made, does not constitute evidence. You must carefully analyze the assertions which have been made to you by counsel for the defendant and counsel for the Government and ascertain what basis those assertions have in the evidence. Look at the evidence. Do not take the work of either of them for what the evidence shows. You can decide that.

This brings us directly to the charges in the indictment itself.

Again I will read the indictment, which, as you have been told, is not evidence of any kind in this case.

Count one says:

"From or about and between the 21st day of November, 1974, and the third day of December, 1974, both dates being approximate and inclusive, within the Eastern District of New York, the defendant, Luis Laboy and the defendant Jose Laboy together with one Alberto Gúinone, named as a co-conspirator herein but not as a defendant, did wilfully and knowingly combine, conspire, confederate and agree together

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to commit an offense against the United States in violation of Title 21 U.S. Code Section 841(a)(1) in that they did conspire to distribute quantities of cocaine, a Scheduled II narcotic drug controlled substance in violation of Title 21, United States Code Section 846.

"In furtherance of said unlawful conspiracy and for the purpose of effecting the objectives thereof the defendant Luis Laboy and the defendant Jose Laboy committed the following overt acts:

"1: On November 21, 1974, Alberto Guinone met with the undercover agent Ronald Melvin at Herkimer Street and Rockaway Avenue in Brooklyn, New York, On December 3rd, 1974, the defendant Luis Laboy met with the undercover Drug Enforcement agent Ronald Melvin at Somers Street and Stone Avenue in Brooklyn, New York, all in violation of Title 21 United States Code Section 846.

"Count two: On or about the third day of December 1974, within the Eastern District of New York the defendant Luis Laboy and the defendant Jose Laboy did knowingly and intentionally possess with intent to distribute approximately 114 grams of cocaine, a Scheduled II narcotic drug controlled substance in violation of Title 21 United States Code Section 841(a)(1)."

As you know, Luis Laboy has already pled guilty

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to this charge but that plea should not be considered by you at all in determining the guilt or innocence of Jose Laboy, indeed, only to show that he is no longer in the case. You are not concerned whatsoever with the fact he did plead guilty.

I think I told you when you first entered the case what Section 841(a)(1) of Title 21 of the United States Code says. I will read it to you again and you must not be overwhelmed by the technicality of the language.

Section 841(a)(1) of Title 21 of the United States Code reads as follows:

"(a) Except as authorized by this sub-chapter, it shall be unlawful for any person knowingly or intentionally

"(1) to distribute, or dispense or possess with intent to distribute, or dispense, a controlled substance."

What is a controlled substance? A controlled substance, as used in the statute, is nothing more than a drug or substance mentioned in one of the schedules set forth in Section 812 of Title 21 of the United States Code. Cocaine is set forth in Schedule II of this Section. In other words, the statute prohibits the unlawful possession with intent to distribute cocaine, with knowledge that it is cocaine.

It is also to be noted that the prohibition in the statute is not limited to the sale of cocaine but prohibits

possession with intent to distribute any amount of cocaine, even though small, if possessed with intent to distribute. Consequently, one may violate the statute by knowingly and intentionally possessing with intent to distribute any amount of cocaine without receiving any money or other consideration therefor. In other words, the statute prohibits any unlawful possession with intent to distribute cocaine in any manner, even though a sale was never made.

You must consider each count separately and you must also consider the evidence against the defendant as to each count separately.

The first count is a charge of conspiracy against these two defendants, or rather one of them was a defendant, to violate Section 841(a)(1) of Title 21 of the United States Code. I have read that to you.

The second count charges both Luis Laboy and Jose Laboy, in addition, with an actual violation of Section 841(a)(1) of Title 21 of the United States Code. So you have two counts. Not only, according to the indictment, are they charged with actual possession which is one offense, but they are also chargedwith conspiracy to have possession with intent to distribute. That, as I think I explained to you, is an offense and a crime in itself. If you just conspire to do it, if you actually did not have any possession of cocaine or never

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acquired it but if you conspired to acquire it with intent to distribute that alone is an offense. Well, let us refer to count two first and the conspiracy referred to in count one, secondly. Let us reverse the charges in the indictment so we understand the indictment a little more clearly.

Referring to the illegal possession with intent to distribute a controlled substance, such as cocaine, as set forth in Count two of the indictment, Section 841(a)(1) of Title 21 of the United States Code provides that it shall be unlawful for any person knowingly or intentionally to possess with intent to distribute a controlled substance, such as cocaine.

The elements of the offense as charged in count two of the indictment are (1) that the defendant possessed a narcotic controlled substance, such as cocaine, with intent to distribute, and (2) that he did so intentionally, wilfully and knowingly.

The burden is upon the Government to prove, beyond a reasonable doubt, both of these elements and failure to prove either is fatal to the prosecution and entitles the defendant to a verdict of acquittal on that particular charge.

Now let us return to count one of the indictment, the conspiracy count, which charges the defendants Luis Laboy and Jose Laboy together with Alberto Guinone with

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wilfully and knowingly combining and conspiring and agreeing together to distribute quantities of cocaine in violation of Sections 841(a)(1) and 846 of Title 21 of the United States Code. I have read to you Section 841(a)(1) of Title 21 of the United States Code. Section 846 of Title 21 of the United States Code, mentioned in the indictment, specifically provides that "Any person who attempts or conspires to commit any offense defined in this subchapter," which includes Section 841(a)(1), shall be subject to the same punishment as prescribed for the offense itself.

As I said before, both the defendants were charged with conspiracy and I have also told you that Luis Laboy has pled guilty and that only leaves one defendant left and that is Jose Laboy. And I have also informed you that the plea of guilty by Luis Laboy has no bearing whatsoever upon the guilt or innocence of the defendant Jose Laboy and you must completely disregard that plea of guilty.

For two or more persons to conspire, to confederate or to combine together to commit or cause to be committed a breach of Section 841(a)(1) of Title 21 of the United States Code is an offense of grave character which involves a plotting to subvert the law. That is almost always characterized by secrecy, requiring much time for its discovery. A conspiracy to commit a violation of Section 841

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(a)(1) is an offense distinct from the actual violation of that Section itself.

The crime of conspiracy, as charged in this indictment, is a separate and distinct crime. The conspiracy is something apart from and independent of the offenses embraced within its unlawful object. The essence of the crime is the unlawful agreement among the parties to commit an offense against the United States -- in this case a violation of Section 841(a)(1) ofTitle 21 of the United States Code, that is, to knowingly and intentionally distribute quantities of cocaine. The actual accomplishment of the unlawful object of the conspiracy is not essential to the crime. Just a conspiracy or an agreement to commit the crime itself is sufficient to constitute a violation of the United States Code.

The essential element of the crime of conspiracy to violate Section 841(a)(1) of Title 21 of the United States Code, otherwise stated, is the unlawful combination of two or more persons, pursuant to an unlawful agreement or common understanding, to commit the offense of knowingly and intentionally distributing quantities of cocaine, or knowingly or intentionally possessing cocaine for that purpose. There is no crime in the absence of such an agreement. Conspiracy to violate some statutes must be accompanied by an overt act

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in furtherance of the object or purpose of the conspiracy, but to prove a conspiracy to violate this particular statute it is not necssary to prove an overt act, although the Government offered evidence of such an overt act or acts and they are stated also in the indictment.

There is no requirement that the agreement be a formal agreement in which the unlawful objects of the conspiracy are explicitly stated. Such a requirement would render proof of the agreement most difficult, if not impossible. It is sufficient that the minds of the parties meet understandingly on their common purpose to commit the offense. The mutual understanding or agreement is usually, if not always, an implied agreement; that is, a mere common understanding among the parties to accomplish by their concerted action, the unlawful object of the conspiracy. Such an agreement or mutual understanding is generally a matter of inference deduced from the acts of the persons accused, done in pursuance of their apparent criminal purpose.

Where you have one or more defendants who are accused of being members of the conspiracy, which as you remember in this indictment talks about Alberto Guinone, Luis Laboy and Jose Laboy, you must find that each defendant not only knows of the objects of the conspiracy, but that in order to promote his own interest or because he has a stake

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in the venture, he adopts the venture as his own. We are not concerned with Luis Laboy or are we concerned with Alberto Guinone. We are only concerned at this stage of the proceeding with Jose Laboy.

To find the existence of a conspiracy, you must first determine from all of the evidence in the case relating to the period of time embraced in the indictment, I think from the twenty-first of November 1974 to the third day of December, 1974, whether or not a conspiracy, as I have defined that term, existed. If you decide that a conspiracy did exist, you must determine as to this defendant, whether or not he was a member of the conspiracy. In determining whether or not this defendant was a member of that conspiracy, you must do so by evidence as to this particular defendant's own conduct, that is, evidence from others of what he, that is Jose Laboy, said or did, and, in determining the preliminary question of whether this defendant became a member of this conspiracy, you must not consider the evidence of what was said about others or what others said or did, but only evidence of what he said or did. And that evidence, of course, comes from others but it must refer to him. In other words, you must determine the membership of this particular defendant in the conspiracy from the evidence and the testimony of the witnesses concerning this defendant's own actions.

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concerning his conduct and concerning his statements. You remember that evidence as well as I and it is really a question of whether you believe it or do not believe it. However, once you have determined that this defendant was a member of the conspiracy, using this test, you must then consider as if made by himself, all the statements and declarations of the co-conspirators made thereafter, that is after he became a member, in furtherance of the conspiracy and during the existance thereof.

The guilt of the defendant, once he is proven to be a member of the conspiracy, may be established by the acts of his fellow conspirators during and in furtherance of the conspiracy, without proof that the defendant did every act constituting the offense.

Any party coming into a conspiracy at any stage of the proceedings with knowledge that an illegal scheme or conspiracy is in operation, becomes under the law, a party to and responsible for all acts done before or after his joinder, by any of the other parties in furtherance of the conspiracy. One who joins such a scheme or conspiracy adopts for himself and makes himself responsible for all that preceded as well as all that which is done during his personal participation. On the other hand, acts done or statements or admissions made after the termination of the

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conspiracy by a particular conspirator, while binding upon such conspirator, have no binding effect upon the other conspirators if not made in their presence.

It is not required that each of the conspirators participate in or have knowledge of all of the conspiracy's operations. The guilt of a conspirator is not governed by the extent of his participation. He need not know of all the alleged conspirators. Even if a defendant participated in the conspiracy to a degree less than that of his fellow conspirators or in a relatively subordinate or minor way, he is equally culpable, as long as he became a member of the conspiracy with knowledge of its general scope and purposes, which in this case was to knowingly and intentionally conspire to possess and distribute a quantity of cocaine.

Now I must tell you in this connection mere association or acquaintance of one defendant with other defendants or with another person without more, does not establish the existence of a conspiracy. However, one may be guilty of a conspiracy to commit a crime even though he did not himself participate in the actual commission of the crime itself, if he conspired with others to commit it. As I said before, one can be guilty of agreeing or conspiring to commit a crime even though the crime was never committed. But you must look at the evidence as it relates to each

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individual defendant, that is Jose Laboy, Luis Laboy and Alberto Guinone.

There is upon the Government the burden to prove beyond a reasonable doubt, that each defendant, in this case it is only Jose Laboy against whom the charge of conspiracy is made, was a party to the conspiracy mentioned in the indictment, and that the object of the conspiracy was to commit a crime, which in this case was knowingly and intentionally possessing cocaine with intent to distribute the same. To find the defendant guilty of conspiracy, you mustfind that he participated in the conspiracy itself.

In this case if you believe the testimony of the Government's witnesses rather than the testimony of the defendant's witnesses, then you may find that the defendant not only was present at the time the negotiations for the sale of cocaine were made but that he also participated in those negotiations with full knowledge that the subject matter was cocaine and that the intent was to distribute it. This fact, however, must be proven, as I have previously indicated to you, by the Government beyond a reasonable doubt.

It is your recollection of the evidence that will count in this case. I will repeat that the Court does not express, and has not expressed, directly or indirectly, subtly or otherwise, by intonation or gesture, any opinion concerning

any of the facts that are involved in this case. If the attorneys, or either of them, have misstated the testimony, disregard such misstatements and it is very important you distinguish argument from facts. Again I advise you that it will be your recollection of the testimony that will control in your deliberations and not the attorneys' arguments.

You must use your common sense in reaching your conclusion.

I have stated to you the indictment and that indictment represents the Government's contentions concerning conspiracy to distribute cocaine at 88 Stone Avenue Brooklyn, New York and the possession of cocaine at that spot and also on Somers Avenue with intent to distribute the same.

In support of their position the Government called Alberto Pinata, who was an informant and Ronald Melvin, a Drug Enforcement Administration federal agent and Robert Jones, who is a Drug Enforcement Administration Federal Agent and Joe Carr, also a Drug Enforcement Administration federal agent, Agent Samuel Blackburn, a Drug Enforcement Administration federal agent and Jeffrey Mr. Weber, who is a forsensic chemist, as you will recall, and he was employed by the Drug Enforcement Administration.

The defendant, on the other hand, called David Rodriguez. You heard him this morning. The defendant also

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called Juan B. Battle, who was a character witness and Jose Laboy.

The case has been very short and I am not going to give you a resume of the testimony because I think you will remember it as well as I.

As I told you, the crimes charged in the indictment require knowledge of an intent to commit the crimes charged.

An act is done knowingly if it is done voluntarily and not because of mistake or accident or other innocent reasons and the transaction is not intentional unless it is knowing. So really, the words "knowingly" and "intentionally" should be considered together.

It is obviously impossible to ascertain or prove directly what a man knew or intended. You cannot look into a person's mind and see what his intentions were or what he knew.. But a careful and intelligent consideration of the facts and circumstances shown by the evidence in any given case as to a person's actions and statements enables us to infer with a reasonable degree of certainty and accuracy what his intentions were in doing or not doing certain things and the state of his knowledge.

The law assumes every man to intend the natural consequences which when standing in his circumstances and

possessing his knowledge would reasonably expect to result from his acts.

"Knowledge," as well as "intent," is descriptive of a state of mind, and, as an element of the offense, is seldom, if ever, susceptible of direct proof. The proof of this element of knowledge and intent may rest, as it frequently does, on evidence of facts and circumstances from which it clearly appears as the only reasonable and logical inference that the defendant conspired to knowingly and intentionally possess with intent to distribute a quantity of cocaine. No person can intentionally avoid knowledge by closing his eyes to the facts that would lead a reasonable man to investigate. However, a mere suspicion that something is wrong or improper is not equivalent to knowledge or intent. On the other hand, knowledge and intent may be inferred from the acts of the party and is a question of fact to be determined from all the circumstances, the whole scenario one might say, and the jury may scrutinize the defendant's entire conduct at the time the offenses alleged were committed. The circumstantial evidence sufficient to support a charge of a conspiracy to knowingly and intentionally possess with intent to distribute cocaine, rust be sufficiently persuasive however, as to exclude the inference of innocence under the circumstances.

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Possession may be actual physical possession of a narcotic drug or it may be what the law calls constructive possession. A person who knowingly has direct physical control over a narcotic drug at a given time is then in actual possession of that drug.

Constructive possession means that although a defendant did not actually have physical possession of the narcotic drug, his relationship with the narcotic drug is such that he had dominion and control over the narcotic drug either solely or jointly with others. Under such circumstances, it is said that a person had constructive possession of the narcotic drug.

The law recognizes also that possession may be solely or joint. If one person alone has actual or constructive possession of a thing or narcotic drug, why that possession is sole, that is alone. If two or more persons share actual or constructive possession of a thing or narcotic drug, their possession is joint.

If you find from the evidence, beyond a reasonable doubt, that the defendant, either alone or jointly with another had actual or constructive possession of the narcotic drug described in the indictment, then you may find that he had possession of that drug within the meaning of the word "possession" as used in these instructions.

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Mere presence of a person at the place where the narcotic drug was located or distributed is not sufficient to charge a defendant with constructive possession. There must be some relationship of dominion by the defendant with the narcotic drug. It is for you to decide whether the defendant in this case was merely present without any further knowledge or dominion over the drug or whether he actually conspired to possess cocaine with intent to distribute the same or whether he had actual or constructive possession alone or with others of that particular drug.

For you to decide that keep in mind the instructions I have just given you. Mere presence alone is not enough but you will decide whether there was more than mere presence alone.

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Evidence has been introduced to the effect that the defendant Jose Laboy and Israel Rodriguez on December 3, 1974, at the intersection of Stone Avenue and Somers Street in Brooklyn, New York, entered an automobile as soon as Luis Laboy was arrested and backed their car from Somers Street into the intersection and turned their car into Stone Avenue after the federal agents ordered them to halt, and in so doing their car collided with a stationary car on Stone Avenue and they were then apprehended.

Flight does not necessarily reflect feelings of

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guilt. There are many motives which might prompt flight. You are not to presume guilt from flight alone by this defendant. You may, but need not, consider flight as one of the circumstances tending to show feelings of guilt; and you may, but need not, consider feelings of guilt as evidence tending to show actual guilt.

In this case one of the Government's witnesses was Alberto Pinata, an informer, who had been indicted in a prior case but had not yet been sentenced. The law does not prohibit the use of informers, but whether you approve of their use or not, is an issue which must not enter into your consideration. In certain types of crime the Government, of necessity, is frequently compelled to rely upon the testimony of accomplices, persons with criminal records, or informers. Otherwise it would be difficult to detect or prosecute some wrongdoers, and this is particularly true in conspiracy cases. Often it has no choice in the matter. It must take the witnesses to the transactions as they are.

I should add in this connection the Attorney General of the United States or his authorized representative is authorized to pay any person from funds appropriated for the Drug Enforcement Administration for information concerning a violation of the narcotics laws of the United States. The informant may be paid any amount deemed by the Drug Enforcement

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Administration to be appropriate.

However, in this particular case the informer, as I told you, had been indicted and had pled guilty. The fact that a person is an informer does not disqualify him from testifying as a witness even though he has pled guilty to an indictment and it does not necessarily mean that his testimony is untruthful. The testimony of an informer, however, who has been indicted and is cooperating with the Government, should be scrutinized very carefully as to his motive or bias in giving false testimony, and you must decide whether his testimony was influenced by the hope or belief that he might receive a lighter sentence on the prior indictment, if he cooperates.

But hope and belief on the part of an informer for a lighter sentence, however, does not necessarily mean that the informer is testifying falsely. Such hope and belief is simply a fact to be considered by you. You look at this witness and decide whether his story is inherently probable or improbable, and whether his testimony carries with it the ring of truth.

The defendant testified in his own behalf. A defendant who wishes to testify is a competent witness, and his testimony should not be disbelieved merely because he is a defendant. However, in weighing his testimony, you may

191 consider the fact that the defendant has a vital interest in the outcome of this trial. And you may also consider and take into account the probabilities or improbabilities of the defendant's stories, and you must consider your common sense in doing so.

The defendant also put on a character witness.

One on trial in a criminal case is entitled to introduce evidence concerning his reputation for honesty and truthfulness. In this case the defendant has produced the testimony of one Juan F. Battle -- you remember him as well as I -- concerning his reputation in the community for honesty and truthfulness. Evidence of honesty and truthfulness is not proof of innocence but when considered with all the other evidence it may alone create a reasonable doubt. Therefore, in considering all of the evidence in the case and in determining the general question of guilt or innocence, it is for you to determine what weight you will give the testimony concerning this defendant's reputation for honesty and truthfulness.

We now come to opinion evidence.

The rules of evidence ordinarily do not permit witnesses to testify as to opinions or conclusions. An exception to this rule exists as to those whom we call "expert witnesses." Witnesses who, by education and experience, have

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become expert in some art, science, profession or calling, may state an opinion as to relevant and material matter, in which they profess to be expert, and may also state their reasons for the opinion.

In this case the Government called to the stand Jeffrey M. Weber, a forensic chemist, who analyzed the substances contained in the packages seized from Luis Laboy and also the two items found on the person of Jose Laboy, and who made reports of their contents. If I am not mistaken I think the defense conceded his qualifications.

You should consider the expert opinion received in evidence in this case, and give it such weight as you may think it deserves. You may accept it or you may reject it. If you should find that it is not based upon sufficient education or experience, or if you should conclude that the reasons given in support of the opinion are not sound, you may reject the opinion entirely.

We come now to the question of circumstantial evidence.

A defendant may be proven guilty by either direct or circumstantial evidence. Direct evidence is the testimony of one who asserts actual knowledge of a fact, such as an eye witness; circumstantial evidence is proof of a chain of facts and circumstances indicating the guilt or innocence

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of a defendant.

The law makes no distinction between the weight to be given to either direct or circumstantial evidence; it requires only that the jury, after weighing all the evidence, must be convinced of the guilt of the defendant beyond a reasonable doubt before he can be convicted.

Now what is circumstantial evidence? Circumstantial evidence is evidence of a fact from which you may reasonably infer the existence or non-existence of another fact. For example, suppose you are in a room with no windows and a person comes into your home wearing a raincoat which is wet, carrying an unmbrella which is wet, that would be circumstantial proof that it is raining outside even though you do not otherwise know it was raining.

Or, to give you another illustration, perhaps a little closer to home here in the courtoom, suppose a member of the jury were to ask the reporter, Mrs. Karr, for a pad and pencil to make notes and suppose that after the jury took a recess and the jury came back and the courtroom clerk, Mr. Bruce Nims, not Mrs. Karr to whom the member of the jury first spoke, were to hand the number one juror, the Forelady, a pad of paper and pencil, that would be obviously circumstantial evidence that Mrs. Karr had given the Forelady's message to Mr. Nims.

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As the words indicate, circumstantial evidence means evidence involving circumstances surrounding the incidents and details as distinguished from direct personal observation. It is more than, and fundamentally different from, mere conjecture or surmise or a guess; because under our law no man is to be convicted on the basis of guess work or speculation.

An inference that is reasonably drawn from the facts testified to is evidence. In analyzing the evidence you may draw reasonable inferences based upon your own common sense and general experience from any facts that you find were proved. While an inference may be reasonably drawn from a proven fact, it may not be drawn from anpther inference. When two inferences may be drawn from a proven fact, one consistent with guilt and one consistent with innocence, you must draw the inference of innocence. A logical inference is to be distinguished from sheer speculation or mere suspicion.

Circumstantial evidence is legal and acceptable evidence. It is that evidence which tends to prove a disputed fact by proof of other facts which have a legitimate tendency to lead the mind to a conclusion that the fact exists which is sought to be established. Circumstantial evidence may consist of an accumulation of many details

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which are so logically interrelated and so consistent with each other, and so inherently probable, that you may not have the slightest doubt as to its truthfulness and accuracy. As a general rule, the law makes no distinction between direct and circumstantial evidence.

Circumstantial evidence may be enough to convict but the circumstantial evidence must be so convincing that it leaves you with no reasonable doubt. If you have a reasonable doubt after you consider all the circumstantial and other evidence as to this defendant, you must acquit him.

Now we will have a word on the credibility of witnesses and we shall conclude.

In considering the evidence you exercise the exclusive function of passing upon the credibility of the witnesses. Now youcan see that this is a very important function, because to determine where the truth lies you must of necessity decide who is telling the truth. How you are to do this is left to your own determination. Among other things, in determining the credibility of a witness, the jury may consider his motive in testifying, his manner and demeanor on the witness stand, his interest, prejudice or bias, if any, whether he has a purpose or interest to serve which might color his or her testimony.

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Interest does not necessarily mean that a witness is untruthful. It is merely an element that you may consider, in reaching your determination, upon the question of whether he is telling the truth. You consider the witness's demeanor; to use a colloquial expression, you "size him up," you look at him when he tells you anything and you decide whether he strikes you as a fair and candid witness, or whether he strikes you as a person who is not telling the truth either intentionally or unintentionally, or whether you find any motive for why he or she willnot tell you the truth. You may also consider the witness's intelligence, his or her state of mind, his or her ability to observe the matters as to which he or she testified and whether he or she impresses you as having a fairly accurate recollection of these matters.

You should also consider the inherent probability or improbability of a witness's testimony, and of course, you should consider the inconsistencies or discrepancies, if any, in the testimony of a witness, or between the testimony of different witnesses. Such inconsistencies or discrepancies may or may not cause you to discredit a witness's testimony.

In weighing the effect of an inconsistency or a discrepancy, always consider whether it pertains to a

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matter of importance or an unimportant detail, and also whether the inconsistency or discrepancy results from innocent error or intentional falsehood. This refers also to omissions, whether it is important or unimportant.

Another consideration is whether or not the witness has been contradicted by other credible evidence and whether or not he has made statements at other times and places, under oath or otherwise, which contradicted or are contrary to those made by him on the witness stand.

As to the latter, you should consider whether any prior inconsistent or contradictory statements conflict with the testimony given by the witness with respect to material or immaterial matters and to what extent, if any, they should be considered to affect the witness's credibility. In considering any prior inconsistent or contradictory statements made by a witness, or the conflict of any testimony the witness had given on the stand with the testimony he had given at some other time or before a Grand Jury, it is important to determine whether those inconsistencies or conflicts referred to material or essential portions of his testimony or to immaterial and unimportant details of his story and to what extent, if any, they affect the credibility of the witness as to the essential facts in the case. You decide what is important and what is not important regardless

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of any statements by either of these attorneys.

In determining where the truth lies, you must rely upon your common sense. You cannot use your imagination, unsupported by any evidence, to determine what actually did happen. There cannot be, of course, any guesswork in the determination of the facts. But you have the right to draw inferences from the evidence but only from the evidence.

The jury is not bound to believe inherently improbable or unreasonable statements made by any witness just because the witness who made them was under oath.

The jury has a right in appraising a particular witness's credibility, as to all or part of his testimony, to consider the probability or improbability of that testimony when viewed in the light of all of the circumstances and other testimony and evidence in the case.

If you find that any witness has knowingly testified falsely to a material fact, you may disregard the entire testimony of that witness, or you may accept that which you believe to be true and disregard the balance. You determine whether the testimony refers to a material fact or something which is unessential or unimportant. If you disregard a witness's testimony altogether and the guilt of the defendant is dependent on such testimony, then, of course, you must acquit the defendant.

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It is for you to determine whether a witness, whoever he may be, is telling the truth as to all the facts or only with respect to some of the facts or whether he is telling the truth at all. The test as to whether you believe a witness is the same test which you apply in your every day business or in your home affairs, where you are called upon to make a similar determination. Do not think, members of the jury, that when you came into this jury box and were sworn as jurors that it was supposed that you would lay aside your business or every day experience or your common sense. You exercise it here like you exercise it outside the jury box. You are now being called upon to use that every day experience, that common sense, to assist you in determining any conflict in the evidence in this case. You are the exclusive judges in determining where the truth lies. You are not bound to believe any story that is inherently improbable.

In this case someone is not telling the truth and it is for you to determine who is telling the truth.

You have been chosen and sworn as jurors. You took an oath as jurors in this case to try the issues of fact presented by the allegations of the indictment and the denial made by the "not guilty" plea of the defendant accused. Let your verdict be without prejudice, bias or sympathy. You are a fact-finding body and it is your duty to decide whether the

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acts charged in the indictment have been committed beyond a reasonable doubt. You are to perform this duty without fear and without bias or prejudice as to any party. The law does not permit jurors to be governed by fear, sympathy, prejudice, or public opinion. In arriving at your decision, you should consider the evidence in the light of your experience and by the exercise of your own knowledge and common sense. You must not permit any plea of sympathy to enter your verdict. The accused and the public expect that you will carefully and impartially consider all the evidence, follow the law as stated by the Court, and reach a just verdict, regardless of the consequences.

In conclusion, let me say again, that it is your duty to weigh this evidence carefully, dispassionately and calmly. You must reach a conclusion about the case as to the facts which are wholly within your finding.

You have heard me tell you what the law is. Once you find the facts it is very easy to apply the law.

The only question for your consideration is whether this defendant is guilty or innocent of the charges which are contained in the indictment. If you are satisfied beyond a reasonable doubt that he is guilty then it is your plain duty to convict him. If you have a reasonable doubt about the matter, it is equally your duty to acquit him.

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The punishment provided by law is a matter exclusively within the province of the Court. You cannot and should not allow consideration of any punishment which may be imposed on the defendant, if he is found guilty, to influence you in arriving at an impartial verdict as to the guilt or innocence of the defendant.

It is for the Court to determine any mitigating or any other special circumstances which may require consideration in the case if the defendant is found guilty, so you should not be concerned with the question of punishment.

Now ladies and gentlemen, all twelve of you must agree, whichever way you find. In other words, your verdict must be unanimous. You mst take each count of the indictment separately and you must determine the guilt or innocence of the defendant with respect to each count. Your form of verdict will be:

"We the jury find the defendant Jose Laboy not guilty on count one" or,

"We the jury find the defendant Jose Laboy guilty on count one", and you must follow the same procedure as to count two.

If you wish any testimony of any witness to be read to you, or if you have any further questions, please send a note to the marshal who will relay your request to me.

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Jury service is not always pleasant and it is rarely convenient. Jury service is one of the keystones of our system of American Justice and democratic government. I want to thank each and every one of you for your outstanding devotion as citizens, to your important work as jurors.

May you, acting in accordance with the evidence and the law, by your verdict declare the truth and proclaim the cause of righteousness and justice.

If you desire to examine any of the exhibits they will be delivered to you upon request, and if after you have retired, you desire to be informed on a point of law arising in the case or to have any part of the testimony clarified, you should ask to be returned to the court for further instructions.

At this point we will take a short recess in order that I may hear applications to be made by counsel. I request you not to consider this case nor discuss it. It will only be when you return that you may be able to discuss this case.

We will take a five minute recess and I will stay here and listen to any applications counsel may have.

(The jury left the courtroom)

THE COURT: Do you have any application?

MR. ADLERSTEIN: The Government is satisfied with the charge.

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THE COURT: Do you have any application Mr. Peltz?

MR. PELTZ: Well, I still never got achance to read defendant's B or C to the jury.

THE COURT: I do not know what you are talking about.

MR. PELTZ: The two exhibits which are in evidence. I asked several times during the trial but I did not get the opportunity and you did not give me a chance during summation.

THE COURT: No, do you have any question, do you have any objection as to the charge?

MR. PELTZ: Yes your Honor.

THE COURT: Well make them. We cannot continue this type of procedure.

MR. PELTZ: I may have missed it but I do not think your Honor charged the presumption never shifts.

THE COURT: No, I do not use those words but I used sufficient words to make it clear the presumption of innocence stays.

MR. PELTZ: As to knowingly and intentionally --

THE COURT: I will not charge that. Next.

MR. PELTZ: And I except to your Honor's failure to charge my request number six.

THE COURT: Just a moment, I have gone over those. You are not going to take the time to go over one of your

charges again and have me rule on it. I have already ruled on them.

MR. PELTZ: Then shall I take exception to your Honor's ruling as to my request?

THE COURT: Yes, you can take any one. If you have any specific one that may help me but not to go over each and every one of your twenty some odd charges and to now give you another opportunity to argue them, that is wrong. Do you have anything specific?

MR. PELTZ: I have four specific ones.

THE COURT: Name them real fast.

MR. PELTZ: Six.

THE COURT: No, I am not interested in numbers. Tell me what it is about.

MR. PELTZ: I did not hear your Honor tell the jury that they had to find each element with regard to each count. I heard it as to one of the counts.

THE COURT: The charge was more than ample on that point.

MR. PELTZ: I object to your Honor's failure to charge the jury that the weight of credibility to be given the testimony of the Government agents should be nogreater than any given by any other witness.

THE COURT: Overruled.

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MR. PELTZ: Respectfully except.

THE COURT: You take too much time with all this business Mr. Peltz. Really, you take more time than any other lawyer I have known in trying a simple case. Give me your main objections or some substantial objections and I will listen to it and rule on it.

MR. PELTZ: May I respond?

THE COURT: You can respond but do not take too much time, it is six o'clock.

MR. PELTZ: For almost two hours of this afternoon we spent in the courtroom doing nothing sir, from two to three.

THE COURT: I do not remember that. What were we doing?

MR. PELTZ: Waiting for your Honor to come out, from two to three o'clock.

MR. ADLERSTEIN: I believe your Honor was composing the charge and I do not believe it was as long as an hour.

THE COURT: It was not from two to three. You made some statements when you were summing up and said that I interrupted you for fifteen minutes which was obviously untrue and as far as taking from two to three doing nothing, I was in there trying to at least orient some of those last minute charges you requested and not given to me and I could not possibly pass on them until I took the lunch hour. It was not

10 pp. ~ 3500 material

UNITED STATES GRAND JURY

EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - x

UNITED STATES OF AMERICA :

-v- : File No. 743589

LUIS LABOY, JOSE LABOY :

- - - - - - - - - - - - - - - - - - x

225 Cadman Plaza East
Brooklyn, New York

February 14, 1975
1:00 P.M.

APPEARANCES:

PAUL CORCORAN,

Assistant United States Attorney

Ann Dule
Acting Grand Jury Reporter

NATIONAL REPORTING INC.
CERTIFIED SHORTHAND REPORTERS
FIVE WORLD TRADE CENTER
NEW YORK, N. Y. 10048
[212] 466-1280

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R O N M E L V I N, called as a witness, having been duly sworn by the Foreman of the Grand Jury, testified as follows:

BY MR. CORCORAN:

Q Would you state your name for the Grand Jury, please?

A My name is Ron Melvin.

Q Mr. Melvin, by whom are you employed?

A The Drug Enforcement Administration.

Q And how long have you been with the DEA?

A Approximately one year.

Q What are your duties with DEA?

A I am a narcotics agent, enforce the Federal Narcotics Law.

Q Were you working on November 20, 1974?

A Yes, sir, I was.

Q What, if anything, occurred that day?

A I received information from an informant that an individual known to the informant as Alberto Gione was capable of supplying one-eighth kilogram quantity of cocaine. I instructed the informant to make arrangements for me to meet with Gione under the pretense that I would be buying one-eighth kilogram of coke.

Q Calling your attention to November 21, 1974, what, if anything, occurred that day?

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A On November 21 I met with the informant at the intersection of Utica and Atlantic Avenues in Brooklyn. We then proceeded to the intersection of Herkermer and Rockaway Avenue in Brooklyn, where the informant got out of the vehicle and went to a nearby store and got in touch with the individual Alberto Gione.

Several minutes later they returned to my vehicle and told Gione that I was interested in buying an eighth of a kilogram of cocaine. Gione says that there wouldn't be any problem, that we should go to see his source, a man by the name of Luis.

Q What did you do at that point?

A Gione instructed me to drive to the intersection of Stone Avenue and Somers Street in Brooklyn, so I drove Gione and the informant there. When we got there, the informant and Gione got out of the car, and they were observed to go into 88 Stone Avenue in Brooklyn.

Q Did you yourself observe them going to 88 Stone Avenue?

A No, I didn't.

Q Where was your car located at that time?

A My car was parked on Somers Street about a half a block from the intersection of Somers and Stone.

Q Were other agents involved in the surveillance that

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day?

A Yes.

Q Was it those agents who observed the informant and Mr. Gione going into 88 Stone Avenue?

A Yes, they did. They were up in the apartment maybe 10, 15 minutes, and they came down and returned to the car, and Gione told me that he had spoken to his source, Luis, and that Luis would sell me one ounce of cocaine for $1300, and if the deal went all right, he would supply the remaining three ounces of cocaine at a later date for $1300 an ounce.

Q Did you purchase an ounce of cocaine from Gione and his source that day?

A No, sir, I didn't.

Q What happened?

A I told Gione that it was too expensive and it would take too much time to do it that way. I told him to tell his source, Luis, either to sell me an eighth kilogram or forget about it for the time being until he can get more cocaine.

Gione agreed to go back to his source. Luis, and tell him this, so he got out of the car and again he was observed by surveillance agents to enter 88 Stone Avenue.

He came back several minutes later, and he informed me that Luis didn't want to do the deal that way, that the most he would sell me was one ounce of cocaine because he

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didn't know me and he was a little bit leary of doing it.

So, I told Gione that I didn't want to do it that way, and I drove him back to Rockaway Avenue and Herkermer Street in Brooklyn, and told him to keep in touch with Luis and that if he changes his mind, get in touch with the informant, and we would do a deal at a later date.

Q Did there come a time when you again met with Mr. Gione?

A Yes, there was, on October 27th the informant contacted me and said that he had been in touch with Gione and that Gione had been in touch with Luis who was now willing to do the deal, to sell me one-eighth kilogram cocaine. So, on November 27 I met with the informant again at Utica and Atlantic Avenues, and we proceeded to Rockaway and Herkermer Street in Brooklyn where the informant went and got in touch with Gione at the same store he did on the previous occasion.

They returned to the car and Gione instructed me to proceed again to the intersection of Stone and Somers Street.

Q And did you do that?

A Yes, sir, I did.

Q What happened after you arrived at Stone and Somers?

A When we got near the intersection, I again parked the car on Somers and Gione and the informant got out of the car and started walking back in the direction of Stone Avenue.

They were observed by surveillance agents to speak with two males who had just exited 88 Stone Avenue, and they spoke with them briefly and then both returned to the car.

Q Did either Gione or the informant tell you what the conversation was about?

A Yes, sir, they did.

Q What was the substance of the conversation as it was related to you?

A Gione had spoken to the two individuals, and the two individuals had informed him that they had just purchased one-eighth kilogram of cocaine from Luis and that Luis had no more cocaine available, so Gione and the informant returned to the car, and they told me of this, and I told Gione again to stay in touch with the informant and to contact us when he received information that Luis was capable of selling an eighth kilogram of cocaine.

Q Calling your attention to December 3, 1974, what, if anything, occurred on that date?

A On December 3 I again received information from the informant that Luis had three ounces of cocaine and that he would be willing to sell it to me for $4800. So, I again met with the informant at Utica and Atlantic Avenues and proceeded directly to Stone Avenue and Somers Street in Brooklyn.

Q Did you see Mr. Gione that day?

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A No, I didn't.

Q You were dealing this time with Luis directly?

A The informant was dealing directly with Luis.

Q What occurred when you arrived at Stone and Somers?

A When we arrived at that location -- prior to arriving at that location I instructed the informant to go up into the apartment and tell Luis that I was downstairs with the money and that I wanted to do the deal, and when they came down to the car, if Luis was carrying the cocaine, the informant was to walk out with his hat off. If we saw them walking out with the informant with the hat off, we would arrest him.

Q Before the informant left to go up to 88 Stone, did you search him?

A Yes, sir. He had no narcotics on him at all.

Q Did there come a time when the informant went into 88 Stone?

A Yes, sir, he did.

Q What happened then?

A He was up in the apartment several minutes, and then two individuals were observed by the surveillance unit to come down and stand at the intersection of Stone Avenue and Somers Street, and minutes after that the informant and Luis, who was later identified as Luis Laboy, came down, and one of the individuals whose name is Jose Laboy was observed

to speak briefly with Luis Laboy, and then they continued along up to the car to meet me, the informant and Luis Laboy.

Q And where were the other two individuals at this time?

A The other two remained on the corner and observed the informant and Luis Laboy walk up to the car.

At this time the informant had his hat off which meant that Luis Laboy was carrying the three ounces of cocaine on him.

So, when the informant and Luis Laboy got into the car, I immediately arrested Laboy and told him to put his hands on his head, and when he put his hands on his head, his jacket opened up and there was a plastic bag stuck in the waistband of his pants, and I pulled it out, and it was cocaine.

At that time, while the surveillance units were coming in to assist me, the two individuals standing on the corner had observed this and got into a 1969 Buick parked right on the corner of Stone Avenue and Somers Street and attempted to escape. They were stopped by the surveillance unit and removed from the car and put under arrest.

Q Was there a search conducted of the two individuals who were arrested?

A Yes, sir, there was.

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Q What, if anything, was the result of that search?

A On the driver of the vehicle whose name was Jose Laboy we found approximately 29 grams gross weight of cocaine and 39 grams gross weight of marijuana. In addition to that, under the front seat on the driver's side,was a loaded 32 caliber revolver.

Q Did you have occasion to take or did you or had an agent have occasion to take these substances seized that day to DEA chemists for analysis?

A Yes, sir, we did.

MR. CORCORAN: Mark these Grand Jury Exhibits 1 and 2.

(So marked.)

Q Agent Melvin, will you examine Grand Jury Exhibit 1 and can you identify that document?

A Yes, sir, I can.

Q What is it?

A It is the cocaine that was on Luis Laboy the night we arrested him.

Q Is that the report of the chemical analysis that was done on that substance?

A Yes, sir, it is.

Q What was the result of that analysis as indicated on that report?

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A The gross weight was 114 grams, and it contained cocaine, lidocaine and lactose, 29.6 percent cocaine.

Q That was the substance that was seized from Luis Laboy?

A Yes, sir.

Q Would you examine Grand Jury Exhibit 2 and tell the Grand Jury what that is?

A Yes, sir, this is the report from the laboratory on the cocaine that was seized from Luis Laboy on December 3.

Q What was the result of the analysis?

A The analysis states that the gross weight was 29 grams. It contained cocaine, lidocaine and lactose, 26.4 percent cocaine.

Q This activity all took place at Somers and Stone?

A Yes, sir.

Q Is that in Brooklyn within the Eastern District of New York?

A Yes, sir.

MR. CORCORAN: Thank you. I have no further questions.

(Witness excused.)

oOo

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------X

UNITED STATES OF AMERICA,

-against-

LOUIS LABOY and JOSE LABOY,

Defendants.
----------X

NOTICE OF MOTION

75 CR 431

PLEASE TAKE NOTICE, that upon the annexed affidavit of PHILIP PELTZ, Esq., attorney for defendant JOSE LABOY, and upon the indictment herein and upon all the pleadings and proceedings heretofore had herein, the undersigned will move this Court at a time and place to be fixed by the Court for an Order dismissing the indictment on the ground that defendant JOSE LABOY has been denied his right to a speedy trial as guaranteed to him under the Constitution of the United States, Rule 48 of the Federal Rules of Criminal Procedure and the Second Circuit Rules Regarding Prompt Disposition of Criminal Cases, all to the prejudice of defendant.

Dated: Brooklyn, New York
September 16, 1975

Yours, etc.,

PHILIP PELTZ
Attorney for Defendant
JOSE LABOY
32 Court Street
Brooklyn, N.Y. 11201
852-4335

To: DAVID A. TRAGER
United States Attorney
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Clerk, United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

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STATE OF NEW YORK)
) ss:
COUNTY OF KINGS)

PHILIP PELTZ, being duly sworn deposes and says:

1. That he is the attorney for JOSE LABOY, one of the defendants herein and makes this affidavit in support of the annexed motion to dismiss the indictment herein for denial of the defendant's speedy trial right.

2. When the case was called for trial on May 19, 1975, both defendants indicted on indictment #75 CR 116 and counsel were ready for trial. Counsel for defendant JOSE LABOY objected to any trial postponement alleging generally that it would be generally prejudicial to his client. At that very moment, the defense had in court as its key witness, ISRAEL RODRIGUEZ. The Court, in the interest of "judicial economy" granted the request of the government to adjourn and postpone the trial to enable the government to obtain a superseding indictment, which it did.

3. The superseding indictment changed an overt act and added as a defendant, ISRAEL RODRIGUEZ. Despite the fact that this Court has dismissed the indictment against him, at this juncture, Mr. Rodriguez is no longer a cooperative, willing defense witness. He remains subject to the government's right to appeal and is in a much more precarious position which has caused him to decline to speak to defense counsel herein.

4. Deponent respectfully submits that the prejudice to his client is manifest and unjust and that the relief requested should be granted.

WHEREFORE, it is respectfully requested that the relief sought in the annexed notice of motion dismissing the indictment be in all respects granted.

(PHILIP PELTZ)

Sworn to before me this
16th day of September, 1975

BERNADETTE DOLAN
Notary Public, State of New York
No. [illegible]
Commission Expires March 30, 1977

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA :

-against- :

LUIS LABOY, JOSE LABOY and ISRAEL RODRIGUEZ, : 75-CR-431

Defendants. :

----------x

BARTELS, D.J.

MEMORANDUM-DECISION and ORDER

Jose Laboy moves under Rule 48 of the Federal Rules of Criminal Procedure to dismiss the indictment against him on the ground that he was denied a speedy trial as required under the Eastern District Plan for Achieving Prompt Disposition of Criminal Cases ("Plan"), (pursuant to Rule 50(b), F.R.Crim.P.).

On December 3, 1974, Luis Laboy, Jose Laboy and Israel Rodriguez were arrested and on February 13, 1975, both Luis Laboy and Jose Laboy were indicted and subsequently arraigned on March 10, 1975. At that time Israel Rodriguez was neither indicted nor arraigned. According to Rule 4 of the Plan, the Government "must be ready for trial within six

months" from the earliest of the above dates, i.e., December 3, 1974, which would be June 3, 1975.

The Court set the case of the two Laboys down for trial on May 19, 1975, at which time counsel for all parties appeared and answered "ready for trial." Before the trial began, however, counsel for the Government requested an adjournment not because the Government was not ready for trial of the two Laboys but because it decided to include Israel Rodriguez in the indictment, pointing out that the same evidence would be employed against all three defendants and that a trial of the two Laboys separately from the trial of Israel Rodriguez would mean judicial duplication. In the interest of judicial economy, the Court agreed to an adjournment provided there was no prejudice to the Laboys. The attorney for Luis Laboy had no objection to the adjournment, while the attorney for Jose Laboy claimed prejudice on the ground that Israel Rodriguez was about to testify in Jose Laboy's behalf but that after the indictment his testimony would not be the same or as effective if available. Counsel for the Government asserted that he had decided to indict Israel Rodriguez the day before he heard of his intention to testify for Jose Laboy. No explanation was

given as to why Jose Laboy could not subpoena Israel Rodriguez and there was no showing that the latter's testimony would be different after indictment than the testimony that might have been given before indictment. Accordingly, the case was set down for trial on July 29, 1975, and subsequently adjourned to September 16, 1975. On September 8, 1975, this Court dismissed the indictment against Israel Rodriguez, although obviously that dismissal played no part in the Court's decision on May 19, 1975, to adjourn the case.

Since the Government was ready for trial within the six-month period, it cannot be faulted for the additional delay after May 19, 1975, occasioned by the Court's decision that judicial economy required the adjournment, particularly in the absence of prejudice to Jose Laboy. Therefore, the motion to dismiss because of a denial of a speedy trial, is hereby denied.

SO ORDERED.

Dated: Brooklyn, N.Y.,
September 17, 1975.

John R. Bartels
United States District Judge

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DEFENDANT: JOSE LABOY

DOCKET NO.: 75 CR 116

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (6/74)

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date — MONTH: 11 DAY: 14 YEAR: 1975

[ ] WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

[X] WITH COUNSEL Philip Peltz, Esq. (Name of counsel)

PLEA

[ ] GUILTY, and the court being satisfied that there is a factual basis for the plea, [ ] NOLO CONTENDERE, [ ] NOT GUILTY

FINDING & JUDGMENT

There being a finding/verdict of [ ] NOT GUILTY. Defendant is discharged [X] GUILTY. in count 1

M'FILMED

M'FILMED

Defendant has been convicted as charged of the offense(s) of violating T-21, U.S.C.Sec. 846, in that from on or about and between Nov. 21 and Dec. 3, 1974, both dates being approximate and inclusive, the defendant, with others, did wilfully & knowingly combine, conspire, confederate and agree together to commit an offense against the U.S. in violation of T-21, U.S.C.Sec. 841(a)(1) in that they did conspire to distribute quantities of cocaine, a Schedule II narcotic drug controlled substance, in violation of T-21, U.S.C.Sec. 846

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of 3 years on count 1, and a special parole term of 5 years in addition to such term of imprisonment. Execution of sentence stayed pending appeal.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
NOV 14 1975
TIME A.M.
P.M.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☐ U.S. District Judge

☐ U.S. Magistrate

Date 11/14/75

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...ork, New York 10007